

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES
Subchapter QQ, Provider Network Contract Registration
28 TAC §§3.9801 - 3.9805

1. INTRODUCTION. The Texas Department of Insurance adopts Subchapter QQ and 28 TAC §§3.9801 - 3.9805 to implement Insurance Code Chapter 1458 enacted under SB 822, 83rd Legislature, Regular Session, 2013. Sections 3.9801 - 3.9805 are adopted with changes to the proposed text published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4625).

2. REASONED JUSTIFICATION. The adopted sections: (1) instruct contracting entities on the information required to be submitted and adopt a Provider Network Contracting Entity Registration Form and a Provider Network Contracting Entity Exemption of Affiliates Form for contracting entities to use; (2) clarify certain submission requirements; (3) establish an initial registration fee; and (4) clarify the express authority requirement for contracts. In response to written comments on the published proposal, TDI has adopted changes to the proposed text in §§3.9801 - 3.9803, and 3.9805. The changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice in the proposal. TDI has also made nonsubstantive changes to the proposed text to reflect *Texas Register* style guidelines. The following discussion provides the reasoned justification for the adopted sections.

§3.9801. Definitions and General Provisions. This section incorporates the definitions established in Insurance Code Chapter 1458, including both general definitions under Insurance Code §1458.001 and the definition of a health benefit plan

3614

under Insurance Code §1458.002. TDI has also defined terms used in Insurance Code Chapter 1458 in this proposal and provided clarification for some of the definitions. The term “TDI” has also been added as a definition.

The statutorily defined term “affiliate” is clarified to include each person that is an affiliate under Insurance Code Chapter 823. The clarification is consistent with Insurance Code Chapter 1458 because the definition of affiliate under Insurance Code §1458.001(1) is the same as that used in Insurance Code §823.003(a). In addition, Insurance Code §1458.001(6) defines “person” as having the same meaning as Insurance Code §823.002, and Insurance Code §1458.055(a)(1) provides that the affiliate cannot be subject to a disclaimer of affiliation under Chapter 823. This clarification will assist persons required to comply with these rules by providing them with a known basis for determining if a person is an affiliate.

TDI has added “fee schedule” as a defined term based on a comment. Fee schedule is used several times in Insurance Code §1458.101(e) and also in Section 2(b) of SB 822 in reference to lines of business in the provider network contract. The phrase “payment or reimbursement terms” is used only in Insurance Code §1458.101(b) in reference to the provider network contract. TDI considers both to apply to the same subject. TDI has determined that it is best to clarify this usage by adding a definition for fee schedule in §3.9801 as “includes payment or reimbursement terms of the provider network contract.” The defined term will apply to all references to fee schedule in §3.9805.

The section defines the terms “other provider network,” “subsidiary provider network,” and “primary provider network” to provide guidance to contracting entities when submitting information, and to ensure consistency in disclosure and that all network relationships are disclosed. Insurance Code §1458.052(b)(2) requires contracting entities to disclose “the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks.” Insurance Code §1458.055(a)(2) creates a similar requirement for contracting entities claiming an exemption for affiliates to disclose the “relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks.” Insurance Code Chapter 1458 does not define the subsidiary or other networks.

The requirements §1458.052(b)(2) and §1458.055(a)(2) to disclose relationships with affiliates and the statement “including subsidiary or other networks” indicate that the legislature intended that those networks were to be included in addition to some other type of network of the contracting entity. Insurance Code Chapter 1458 does not define this network.

TDI proposed definitions for these terms based in part on the coverage each provided. Commenters indicated that the proposed definitions were not standard in the industry and were confusing. To address the comments, the adopted definitions have been changed to be based on the contracting entity and the relationship between the submitting entity and the contracting entity.

The term “primary network” has been revised to mean a provider network in which the contracting entity submitting the form is the contracting entity for the network. The term “subsidiary network” has been revised to mean a provider network in which the contracting entity or entities for the provider network are an affiliate of the contracting entity submitting the form, except for a provider network that also qualifies as a primary provider network. The exception means the network need only be disclosed as a primary provider network. The term “other provider network” has been revised to mean a provider network that may be accessed by the contracting entity submitting the form or the submitting entity’s affiliate, but in which the contracting entity for the provider network is not an affiliate of the entity submitting the form. As defined, these terms should involve less subjective judgment in determining the type of network while still providing for the disclosure of provider network relationships.

Section 3.9801(c) clarifies three matters related to contracting entities. Subsection (c)(1) provides that the term “provider network contracting entity” has the same meaning as “contracting entity” in this subchapter. This definition is based on Insurance Code Chapter 1458, which refers to Provider Network Contract Arrangements and defines “contracting entity” to mean “a person who ...in the ordinary course of business establishes a provider network or networks for access by another party.”

Section 3.9801(c)(2) clarifies that a person begins to act as a contracting entity when the person enters into or offers to enter into direct contracts with one or more providers for the delivery of health care services to covered individuals to create a

provider network or networks to be accessed by another party. It is at that point the payment or reimbursement terms of the provider network contract must be known and it is the provider network contract, not the access by other parties that triggers the responsibilities of a contracting entity under Insurance Code Chapter 1458, Subchapter C.

Subsection (c)(3) clarifies that access to a provider network or networks by another party includes access by an affiliate because, as it is defined in Insurance Code §1458.001, an affiliate is a separate person from the contracting entity. This also clarifies that a contracting entity exists even if it only allows affiliates to access its provider network or networks and denies access to nonaffiliates.

§3.9802. Provider Network Contracting Entity Registration Form Required.

The purpose of the submission requirements in Insurance Code §1458.051 and §1458.055 is the identification of provider network contracting entities and affiliates. This includes health maintenance organizations (HMOs) and other persons holding a certificate of authority issued by TDI to engage in the business of insurance in this state, and other persons that operate as provider network contracting entities. The identification process involves submitting either the Provider Network Contracting Entity Registration Form or the Provider Network Contracting Entity Exemption of Affiliates Form under §3.9802 or §3.9803.

Section 3.9802(a) adopts the Provider Network Contracting Entity Registration Form by reference. The form is authorized under Insurance Code §1458.053. The disclosures required by the form are specified in Insurance Code §1458.052.

3614

The adopted form has been changed from the proposal to include the disclosures required under Insurance Code §1458.052(b). These requirements were not printed in the original proposed form; however, they are required by statute. The proposal noticed in its preamble that the form would require disclosures specified under Insurance Code §1458.052. This is not a new requirement or cost of the proposal, because persons submitting a registration required by §1458.051(a) are required by statute to disclose the information. Although authorized under Insurance Code §1458.052(a)(4), the adopted form does not require information in addition to the statutory disclosures.

Section 3.9802(b) requires contracting entities not described in §3.9802(c) to submit the registration form and the required fee within 30 days of beginning to act as a contracting entity to comply with Insurance Code §1458.051(a) and §1458.054. Subsection (b) also provides existing contracting entities until December 1, 2014, to submit the registration form as a reasonable period following the adoption of these rules to comply with the submission requirement. This compliance date only applies to the submission of the required form and not the statute as a whole.

Section 3.9802(c) describes contracting entities that are not required to register under this section. The entities listed in this subsection have not changed from the proposed text. These entities include contracting HMOs operating under Insurance Code Chapter 843 or other persons holding a certificate of authority that are required to register under §3.9803 and do not have an affiliates or are not requesting an affiliate exemption under §3.9803.

In response to comments, TDI has modified §3.9802(c)(3), to clarify that affiliates named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 must have been granted an exemption by the commissioner before they are exempt from the submission requirements under this section. The affiliate entities are listed here because the exemption under Insurance Code §1458.051(b) applies not only to affiliated contracting entities that are HMOs or that hold a certificate of authority, but also to those affiliates that would otherwise be required to register under Insurance Code §1458.051(a). The submission requirements and exemptions applicable to the entities described in §3.9802(c) are further addressed in the discussion of §3.9803.

Section 3.9802(d) requires contracting entities submitting the Provider Network Contracting Entity Registration Form to report any changes to the information submitted in the form no later than the 30th day after the day the change takes effect. This requirement is necessary for TDI to have current name and contact information for the contracting entity, which is required under Insurance Code §1458.052. A 30-day period for updating contact information should be reasonable for the contracting entity to perform this task.

Under subsection (e), the contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format to the address TDI will provide on the form. This is consistent with the requirement in Insurance Code §1548.053.

§3.9803. Provider Network Contracting Entity Exemption of Affiliates Form

Required. TDI adopts the Provider Network Contracting Entity Exemption of Affiliates Form by reference in subsection (a). The form is authorized under Insurance Code §1458.053.

Insurance Code §1458.055 requires an HMO or other person holding a certificate of authority issued by TDI to engage in the business of insurance to disclose the information requested under questions 6 and 7 of the Provider Network Contracting Entity Exemption of Affiliates Form. The disclosures required under questions 1 - 5 are adopted under the commissioner's general authority to adopt rules to implement this chapter under Insurance Code §1458.004. Questions 1 - 5 require the submitting entity to disclose basic identification and contact information and are similar disclosures to those required of contracting entities submitting the Provider Network Contracting Entity Registration Form under §3.9802 and listed in Insurance Code §1458.052.

Section 3.9803(b) requires an HMO or other person holding a certificate of authority issued by TDI to engage in the business of insurance in this state to submit the Provider Network Contracting Entity Exemption of Affiliates Form to comply with Insurance Code §1458.051(b). Based on comments, the adoption changes subsection (b) to indicate that affiliates that have been granted an exemption under this section are not required submit a separate form.

TDI has not changed the requirement for an HMO or other person holding a certificate of authority to submit the form even if they have no affiliates. Insurance Code §1458.051 establishes the requirement for contracting entities to register. Insurance

3614

Code §1458.051(a) applies to contracting entities that are not HMOs or that do not hold a certificate of authority. Insurance Code §1458.051(b) specifically applies to contracting entities that are HMOs or that hold a certificate of authority.

Insurance Code §1458.051(b) requires contracting entities that are HMOs or that hold a certificate of authority to submit “an application for exemption from registration under which the affiliates may access the contracting entity’s network.” Insurance Code §1458.051(b) does not exempt contracting entities that are HMOs or that hold a certificate of authority from Insurance Code §1458.051(a), because subsection (a) does not apply to or place any requirements on contracting entities that are HMOs or that hold a certificate of authority. The subsection does reference Insurance Code §1458.055, which addresses the procedure and requirements for the commissioner to “grant an exemption for affiliates of a contracting entity....” When read together, the exemption provided in Insurance Code §1458.051(b) and §1458.055 applies not to the contracting entity submitting the application, but to its affiliates.

Insurance Code §1458.051(b) also states that it is to be read “notwithstanding” Insurance Code §1458.051(a). That means Insurance Code §1458.051(b) creates an exception for contracting entities covered by Insurance Code §1458.051(a). Because Insurance Code §1458.051(b) allows for an affiliate exemption, the exception created by the “notwithstanding” statement is that affiliates of HMOs or other entities that hold a certificate of authority and that would otherwise be required to register under Insurance Code §1458.051(a), may be exempt under Insurance Code §1458.051(b). Insurance Code §1458.051(b) allows for the exemption of all affiliates of an HMO or other entity

that holds a certificate of authority that meet the requirements of Insurance Code §1458.055.

In addition, Insurance Code §1458.051(b) places the application submission requirement on the “contracting entity that holds a certificate of authority issued by TDI to engage in the business of insurance in this state or is a health maintenance organization.” The subsection does not limit the requirement to contracting entities that have affiliates. Insurance Code §1458.051(b) is permissive concerning the exemption of affiliates providing only that, in conjunction with Insurance Code §1458.055, the affiliates accessing the contracting entity’s network may be exempt from registration.

TDI considers the purpose of the Insurance Code §1458.051 and §1458.055 to be the identification of provider network contracting entities and network relationships. The requirement in §3.9803(b) is consistent with that purpose. For example, under §3.9803(b) an insurer with multiple network accessing affiliates, which may or may not be contracting entities, need only submit one form detailing the organization’s network relationships under Insurance Code §1458.051(b) and §1458.055. Likewise, a third party administrator contracting entity with no accessing affiliates cannot avoid identifying its participation in the market, but must submit the application required of contracting entities with a certificate of authority under Insurance Code §1458.051.

Insurance Code §1458.054 authorizes TDI to establish and collect a fee for the submission of forms in the registration process. TDI considers submission of the form under this section to be part of the registration process under Insurance Code Chapter 1458. No additional fee is required for affiliates listed in the submission.

The period for making the submission is necessary so contracting entities will know when the action must be completed, and is reasonable based on the 30-day period established for other contracting entity registrants under Insurance Code §1458.051(a). Subsection (b) also provides existing contracting entities until December 1, 2014, as a reasonable period to comply with the submission requirement. This compliance date only applies to the submission of the required form under this section and not to the statute as a whole.

Section 3.9803(c)(1) provides that each contracting entity submitting the Provider Network Contracting Entity Exemption of Affiliates Form must list each affiliate of the contracting entity that will access the provider networks disclosed in the submission, or the contracting entity must state that it has no affiliates. Insurance Code §1458.051 and §1458.055 require this procedure. Insurance Code §1458.051(c) provides that a contracting entity submitting the form required under Insurance Code §1458.051(b) must list its affiliates. Insurance Code §1458.055 provides that the commissioner will grant an exemption for the qualifying affiliates of the contracting entity. Because the exemption applies only to those affiliates that will access the contracting entity's network, the contracting entity must only list those affiliates that will need access to the networks, including subsidiary and other networks and the affiliate contracting entities.

As previously addressed in the discussion of this section, §3.9803(c)(1) provides that a contracting entity that is an HMO or other entity holding a certificate of authority issued by TDI to engage in the business of insurance in this state must submit an

application under §3.9803(b) even if the HMO or authorized entity has no affiliates or intends that no affiliates will access its network.

To comply with the disclosure requirements under §1458.055, §3.9803(c)(2) describes the provider network contracting relationships between the person who holds a certificate of authority and all affiliates of the person that must be disclosed. Subsection (c)(2) provides that the contracting entity must also disclose if it or an affiliate allows nonaffiliated third parties to use one or more of the disclosed networks. The disclosure must state whether the contracting entity or the affiliate provided access to a third party.

Section 3.9803(d) provides that the commissioner must grant the exemption required under Insurance Code §1458.055(b) in writing before the exemption will be effective. Requiring a written record of the exemption will provide a definite record of the exemption for all concerned parties.

Section 3.9803(e) establishes the date for the annual update of the list of the contracting entities' affiliates as required under Insurance Code §1458.051(c). Based on comments, TDI has changed the annual update requirement from January 31 of each year to August 1 of each year. Under §3.9803(f), the contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format to the address TDI will provide in the Provider Network Contracting Entity Registration Form. This provision is consistent with the requirement in Insurance Code §1458.053

§3.9804. Required Fees. This section establishes a \$1,000 fee for submitting a Provider Network Contracting Entity Registration Form under §3.9802 or a Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803. Fees are not required for updating submissions, including a submission that lists new affiliates under a previously submitted Provider Network Contracting Entity Exemption of Affiliates Form. The one-time fee is based on other similar licensing structures and applies to the cost of recording the initial registration, recording annual updates, reviewing and granting exemptions, and maintaining the database over the duration of the program.

A contracting entity that submits a Provider Network Contracting Entity Exemption of Affiliates Form must submit the registration fee even if the contracting entity has no affiliates. The costs will be similar to those of an entity registering under §3.9802 or §3.9803, and the one-time fee will apply to the consideration and approval of any affiliates for which the entity may seek exemptions in the future.

§3.9805. Express Authority. The purpose of §3.9805 is to identify the exception to the express authority by restating Section 2(b) of SB 822, because enacting language of the bill will not always be published with the statutory provisions of Insurance Code Chapter 1458. Section 3.9805(a) provided that express authority cannot be presumed except for the exception listed in §3.9805(c). TDI considers this to be a general requirement of Insurance Code Chapter 1458.101. Based on comments, TDI removed the term “negotiated” and defined the term “fee schedule” in §3.9801. Section 3.9805(b) requires the contracting entity to notify the provider about all fee schedules applicable to that provider. It is a business decision of the contracting entity

to determine how to comply with the requirements of Insurance Code §1458.101(b).

Subsection (b) is not intended to limit the means of obtaining the provider's express authority or the contracting entity's ability to establish contractual requirements.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General

Comment: A commenter expresses appreciation for TDI's informal rule process and TDI's willingness to seek and consider stakeholder input and revise draft rules based on that input during the rule making process.

Agency Response: TDI appreciates the commenter's and other commenters' and stakeholders' participation in TDI's informal and formal rule drafting processes.

Comment: A commenter notes that, based on its experience working to develop the National Conference of Insurance Legislators' Rental Network Contract Arrangements model Act and working with several states to implement Silent Preferred Provider Organization legislation, some corrections or changes may be needed over time to assure transparency while allowing the group health market to function efficiently.

Agency Response: TDI will consider the effect of any future legislation on these rules and welcomes stakeholder input in that process.

Section 3.9801(b)

Comment: Several commenters suggest that the proposed definitions of “primary network,” “subsidiary network,” and “other network”:

- (1) seem circular;
- (2) are internally vague, inconsistent, and unnecessary;
- (3) are relative to each other and not specific enough to readily categorize the networks;
- (4) do not provide a reasonable means to label or categorize various network relationships;
- (5) raise questions on determining the primary and subsidiary network when a holding company has multiple insurance entities in the state and those entities manage multiple networks that each could meet the definition of primary or subsidiary;
- (6) do not define what is meant by “specific limited coverage, provider types, or geographic regions” in the definition of a subsidiary network; and
- (7) are unnecessary because the rule could simply require that the applicant disclose the contracted provider network relationships between it and its affiliates.

A commenter further states that it could identify which entities do contracting, but that it was not clear how the entities fit into the proposed definitions. Commenters request clarity on what the terms “primary,” “subsidiary,” and “other” mean.

Agency Response: TDI appreciates the comments and has revised these definitions. TDI considers the terms necessary because Insurance Code §1458.052 and §1458.055 specifically uses the terms “subsidiary” and “other” networks. The requirements in §1458.052(b)(2) and §1458.055(a)(2) to disclose relationships with affiliates and the

statement, “including subsidiary or other networks,” indicates that the Legislature intended that those networks be included, in addition to some other type of network of the contracting entity. These networks are not defined in Insurance Code Chapter 1458.

As demonstrated by the example in the proposal and the comments, these terms may have different meanings to different persons. However, defining the terms provides some guidance to contracting entities when submitting information and results in consistency in disclosures.

TDI acknowledges, based on the comments, that the proposed definitions could be confusing. TDI agrees with the comment that the submitting entity should be able to identify the contracting entity. The adopted definitions have been changed to be based on the person contracting for the provider network and the relationship between the submitting entity and the contracting entity.

The term “primary network” has been revised to mean a provider contracting network in which the contracting entity submitting the form is the contracting entity for the network. The term “subsidiary network” has been revised to mean a provider network in which the contracting entity or entities for the provider network are an affiliate of the contracting entity submitting the form, except for a provider network that also qualifies as a primary provider network. The exception means the network need only be disclosed as a primary provider network. The term “other provider network” has been revised to mean a provider network that may be accessed by the contracting entity submitting the form or the submitting entity’s affiliate, but in which the contracting entity

3614

for the provider network is not an affiliate of the entity submitting the form. As defined, these terms should involve less subjective judgment in determining the type of network while still providing for the disclosure of provider network relationships.

Comment: A commenter recommends that TDI modify the definition of a “primary provider network” to track the language of the other incorporated defined terms within the definition.

Agency Response: TDI agrees with the comment and has revised the definitions. TDI has also revised §3.9803(c)(2) to reference the defined terms.

Comment: A commenter states that the definitions are only used in the proposed affiliate exemption form and do not apply to persons registering under Insurance Code §1458.051(a).

Agency Response: TDI disagrees with the comment. The terms are also used for contracting entities registering under Insurance Code §1458.051(a) and submitting information under Insurance Code §1458.052(b). TDI did not include the terms in the proposed Provider Network Contracting Entity Registration Form, but statute requires them.

The adopted form has been changed from the proposal to include the disclosures required under Insurance Code §1458.052(b). TDI noted in the proposal that the form would require disclosures specified under Insurance Code §1458.052. Listing the disclosures in the form is not a new requirement and does not result in additional costs not identified in the proposal, because persons submitting a registration required by §1458.051(a) are required by statute to disclose the information. Although authorized

3614

under Insurance Code §1458.052(a)(4), the adopted form does not require information in addition to the statutory disclosures.

Section 3.9801(c)(2)

Comment: Two commenters support the proposed text stating that the triggering event for operating as a contracting entity begins when contracts are offered. The commenters state that it requires the building of the network to be consistent with the requirements of the law and ensures compliance with the registration process and the time frames that flow from contracting entity status.

Agency Response: TDI agrees with the commenters that establishing a point when a person becomes a contracting entity is necessary for uniform compliance and enforcement of the rule and statute.

Section 3.9802(a)

Comment: A commenter suggests that the Provider Network Contracting Entity Registration Form more closely track with Insurance Code §1458.052 and require the registrant to submit the names under which it intends to engage or has engaged in business in Texas, because a registering contracting entity may not be engaged in the business of insurance.

Agency Response: TDI agrees and has removed the reference limiting the requirement to entities engaged in the business of insurance in Texas.

3614

Comment: A commenter suggests that TDI change the Provider Network Contracting Entity Registration Form to require the contracting entity to provide its mailing address and main telephone number of the contracting entity's headquarters, consistent with Insurance Code §1458.052(a)(2) and (3).

Agency Response: TDI agrees with the comment and has made the change.

Comment: A commenter strongly recommends that TDI include a section at the end of the Provider Network Contracting Entity Registration Form titled "Statutorily Required Attachments," which would list the requirements stated in Insurance Code §1458.052(b). The commenter expresses concern that without the inclusion of the above-recommended language, these contracting entities may not be aware of the need to submit additional attachments to satisfy statutory registration requirements and that TDI will have to expend significant time and effort requesting the information.

Agency Response: TDI agrees and has changed the Provider Network Contracting Entity Registration Form to list the requirements, with a reference to Insurance Code §1458.052(b). As stated in a prior response to comments, TDI noted in the proposal that the form would require disclosures specified under Insurance Code §1458.052. Listing the disclosures in the form is not a new requirement and does not result in additional costs not identified in the proposal, because persons submitting a registration required by §1458.051(a) are required by statute to disclose the information.

Section 3.9802(b) and §3.9803(b)

3614

Comment: A commenter suggests that TDI require contracting entities to submit the Provider Network Contracting Entity Registration Form and the Provider Network Contracting Entity Exemption of Affiliates Form not later than 60 days from the effective date of rules.

Agency response: TDI agrees that contracting entities should have a reasonable period to complete and submit the required forms. TDI also notes that the statute was enacted in June 2013, and the proposed rules were published in June 2014, giving contracting entities significant notice that the requirement was coming. In addition, the information required to be disclosed is known to the entities. TDI agrees that establishing a specific date for completion of the requirement will also avoid confusion about when the submissions are due. TDI considers the December 1, 2014, deadline adequate time for contracting entities to complete and submit the forms.

Section 3.9802(c)(1)

Comment: A commenter requests that TDI change this provision to “health maintenance organization operated under Insurance Code Chapter 843.” The commenter states that the change would be consistent with the terminology in Insurance Code Chapter 1458 and would recognize the basic nature of HMOs as prepaid healthcare and not insurance.

Agency Response: TDI agrees to make the requested change in this instance. The terminology is used in the exclusion under Insurance Code §1458.051(a). HMOs,

3614

without reference to Insurance Code Chapter 843, are specifically included in Insurance Code §1458.051(b) and §1458.055(a).

HMOs operate under a certificate of authority issued by TDI under Insurance Code §843.071. The reference to entities holding a certificate of authority issued by TDI to engage in the business of insurance in this state includes insurers, third party administrators, and possibly other entities within the scope of other potential contracting entities required to submit information under Insurance Code §1458.051(b). TDI generally uses the phrase “HMO or other entity holding a certificate of authority” in this adoption to reference the entities described in Insurance Code §1458.051(b) and §1458.055(a).

Section 3.9802(c)(3)

Comment: A commenter supports the presumed intent of proposed §3.9802(c)(3), which the commenter interprets as continuing to require an affiliate who has not been named on the exemption form and granted an exemption to submit its own registration as a contracting entity. The commenter suggests that the provision does not entirely reflect the statute, because the statement includes both prerequisite elements of the exemption. The entity must be named on the submitted exemption form and be granted an exemption by the commissioner in writing. The commenter requests TDI revise the statement.

Agency Response: TDI agrees with the comment and has revised the statement. The revised statement specifies that the affiliate must be “named on the Provider Network

3614

Contracting Entity Exemption of Affiliates Form submitted under §3.9803 of this title and granted an exemption by the commissioner in writing under §3.9803(d) of this title.”

Section 3.9802(d)

Comment: A commenter strongly supports the requirement for a registrant to report any changes to the information submitted in the Provider Network Contracting Entity Registration Form no later than 30 days after the date on which the change takes effect.

Agency Response: TDI appreciates the comment.

Section 3.9803(a)

Comment: A commenter recommends that questions 1 through 3 of the Provider Network Contracting Entity Exemption of Affiliates Form be changed to require the same information required in the Provider Network Contracting Entity Registration Form, including names used by the contracting entity engaged in other than the business of insurance and the address and phone number of the contracting entity’s headquarters.

Agency Response: TDI disagrees that the forms need to be the same and declines to make the recommended changes. Insurance Code §1458.051 establishes the requirement for contracting entities to identify themselves by submitting a registration under Insurance Code §1458.051(a) or application under Insurance Code §1458.051(b). While both subsections result in registration of the contracting entity and are part of the registration process under Insurance Code §1458.054, only contracting

3614

entities under Insurance Code §1458.051(a) are required to register for the purpose of complying with the disclosure requirements under Insurance Code §1458.052.

Section 3.9802(a) adopts the Provider Network Contracting Entity Exemption of Affiliates Form for the registration under Insurance Code §1458.051(a). Section 3.9803(a) adopts the Provider Network Contracting Entity Exemption of Affiliates Form as the application under Insurance Code §1458.051(b). Entities submitting the form under §3.9803 must be an HMO or otherwise have a certificate of authority from TDI, which means the entity is sufficiently known by TDI to grant licensure.

TDI must determine that an entity submitting the Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803 is an HMO or otherwise has a certificate of authority from TDI. The disclosures required in questions 1 through 3 of the Provider Network Contracting Entity Exemption of Affiliates Form are sufficient to provide identification information needed to make that determination.

Comment: A commenter suggests that the terms used in question 6 of the Provider Network Contracting Entity Exemption of Affiliates Form should match the terms used in §3.9801.

Agency Response. TDI agrees and revised the question to list primary provider networks, subsidiary provider networks, and other provider networks.

Section 3.9803(b).

Comment: A commenter states that the requirement for a contracting entity holding a certificate of authority issued by TDI to engage in the business of insurance or an HMO

operating under Insurance Code Chapter 843 to submit a form even if it has no affiliates does not comport with the statutes adopted in SB 822. The commenter points to Insurance Code §1458.051(b), which requires contracting entities to submit “an application for exemption from registration under which the affiliates may access the contracting entity’s network.”

Agency Response: TDI disagrees with the commenter and declines to make a change. Insurance Code §1458.051 establishes the requirement for contracting entities to identify themselves by submitting a registration or application. Insurance Code §1458.051(a) applies to contracting entities that are not HMOs or that do not hold a certificate of authority. Insurance Code §1458.051(b) specifically applies to contracting entities that are HMOs or that hold a certificate of authority.

As the commenter quotes, Insurance Code §1458.051(b) requires contracting that are HMOs or that hold a certificate of authority to submit “an application for exemption from registration under which the affiliates may access the contracting entity’s network.” Insurance Code §1458.051(b) does not exempt contracting entities that are HMOs or that hold a certificate of authority from Insurance Code §1458.051(a), because subsection (a) does not apply to or place any requirements on contracting entities that are HMOs or that hold a certificate of authority. The subsection references Insurance Code §1458.055, which addresses the procedure and requirements for the commissioner to “grant an exemption for affiliates of a contracting entity....” When read together, the exemption provided in Insurance Code §1458.051(b) and §1458.055 applies not to the contract entity submitting the application, but to its affiliates.

3614

Insurance Code §1458.051(b) also states that it is to be read “notwithstanding” Insurance Code §1458.051(a). That means Insurance Code §1458.051(b) creates an exception for contracting entities covered by Insurance Code §1458.051(a). Because Insurance Code §1458.051(b) allows for an affiliate exemption, the exception created by the “notwithstanding” statement is that affiliates of HMOs or other entities that hold a certificate of authority and that would otherwise be required to register under Insurance Code §1458.051(a), may be exempt under Insurance Code §1458.051(b). Insurance Code §1458.051(b) allows for the exemption of all affiliates of an HMO or other entity that holds a certificate of authority that meet the requirements of Insurance Code §1458.055.

In addition, Insurance Code §1458.051(b) places the application submission requirement on the “contracting entity that holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization....” The subsection does not limit the requirement to contracting entities that have affiliates. Insurance Code §1458.051(b) is permissive concerning the exemption of affiliates providing only that, in conjunction with Insurance Code §1458.055, the affiliates accessing the contracting entity’s network may be exempt from registration.

TDI considers the purpose of the Insurance Code §1458.051 and §1458.055 to be the identification of provider network contracting entities and network relationships. The requirement in §3.9803(b) is consistent with that purpose. For example, under §3.9803(b) an insurer with multiple network accessing affiliates, which may or may not

be contracting entities, need only submit one form detailing the organization's network relationships under Insurance Code §1458.051(b) and §1458.055. Likewise, a third party administrator contracting entity with no accessing affiliates cannot avoid identifying its participation in the market, but must submit the application required of contracting entities with a certificate of authority under Insurance Code §1458.051.

Comment: A commenter requests that TDI clarify the rules to state whether a registration or affiliate exemption form is required, if the contracting entity is an affiliate of an authorized person.

Agency Response: TDI agrees with the commenter that the scope of the exemption and the requirement to submit a registration or affiliate exemption must be definite. TDI has addressed the statutory basis and scope of the exemption in previous responses to comments. The Insurance Code §1458.051(b) exemption not only applies to affiliated contracting entities that are HMOs or that hold a certificate of authority, but also to those affiliates that would otherwise be required to register under Insurance Code §1458.051(a). Affiliates that have been granted an exemption are not required to submit a form under §3.9802 or 3.9803.

Three types of contracting entities exist under Insurance Code Chapter 1458. The contracting entities may be: (1) HMOs, (2) other entities holding a certificate of authority, or (3) affiliates named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 and granted an exemption by the commissioner in writing under §3.9803(d). As previously addressed, contracting entities that are HMOs and other entities holding a certificate of authority are not subject to

Insurance Code §1458.051(a) or the submission requirement in §3.9802. The listing of exempt affiliates named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 is needed to clarify that affiliates that do not hold a certificate of authority are not required to submit a separate registration under §3.9802 if they have been granted an exemption.

Comment: Two commenters request that TDI clarify that a single insurer may submit a consolidated affiliate exemption for all affiliated contracting entities. The commenters state that requiring separate forms for affiliates would result in submission of redundant information and unnecessary administrative work and costs.

Agency Response: TDI agrees with the commenters and considers the comments consistent with the intent of Insurance Code §1458.051(b) and §1458.055 and TDI's proposal. To clarify the intent in these rules, TDI has modified §3.9803(b) and revised the definitions of primary, subsidiary, and other networks in §3.9801(b). The submission must comply with Insurance Code §1458.055, but as discussed in response to a prior comment, under §3.9803(b) an insurer with multiple affiliates that are contracting entities need only submit one Provider Network Contracting Entity Exemption of Affiliates Form.

The affiliate exemption provision applies only to affiliates of contracting entities that are HMOs or that hold a certificate of authority and submit an application under Insurance Code §1458.051(b) and §3.9803. Affiliated contracting entities registering under Insurance Code §1458.051(a) and §3.9802 do not have a similar affiliate exemption provision and must register independently.

3614

Comment: A commenter states that the requirement to list all affiliates under proposed §3.9803(c) is overly broad and burdensome. The commenter requests that the requirement be revised to list only those affiliates that will access the contracting entity's provider networks.

Agency Response: TDI agrees with the comment and revised the requirement. Insurance Code §1458.051(b) provides for an exemption under which the affiliates may access the contracting entity's network. This does not diminish the disclosure requirements. Insurance Code §1458.055(a)(2) requires disclosure of the "relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks." Exempt affiliate entities may have their own subsidiary networks that need to be disclosed. TDI has changed the requirement to "list each affiliate of the contracting entity that will access the provider networks disclosed in the submission"

Comment: A commenter states that the requirement to disclose "the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks" under Insurance Code §1458.052 applies only to insurers required to register under Insurance Code §1458.051 and not to contracting entities applying for exemption from the registration requirement. The commenter requests that TDI rules not impose this additional requirement on contracting entities subject to the affiliate exemption.

Agency Response: TDI does not agree with the commenter's assertions. The disclosure requirement in Provider Network Contracting Entity Exemption of Affiliates

3614

Form is based on Insurance Code §1458.055(a)(2), not Insurance Code §1458.052. To apply for an affiliate exemption under Insurance Code §1458.051(b), the contracting entity must disclose under Insurance Code §1458.055(a)(2) “the relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks.” TDI declines to make the requested change.

Section 3.9803(c)(1)

Comment: A commenter supports inclusion of the requirement that the contracting entity submitting the Provider Network Contracting Entity Exemption Affiliate Form must list each affiliate of the contracting entity that will access the provider networks, or state that the contracting entity has no affiliates.

Agency Response: TDI appreciates the comment. The rationale for including the requirement was addressed in other comment responses.

Section 3.9803(d)

Comment: A commenter expresses concern that §3.9803(d), providing that an affiliate exemption is not effective until granted in writing by the commissioner, does not state a deadline for TDI action. To ensure a useful and orderly application and exemption process, the commenter suggests that the rules include a provision that the exemption is “deemed” approved within 60 days of receipt if no action has been taken.

Agency Response: TDI disagrees and declines to make the requested change.

Insurance Code §1458.051(b) allows for an “exemption from registration under which

the affiliates may access the contracting entity's network." Insurance Code

§1458.055(a) requires the commissioner to grant the affiliate exemption. Taken together, these sections mean that an affiliate may not access the contracting entity's network until the exception is granted. Section 3.9803(d) states this for clarity. Chapter 1458 does not provide for or specifically authorize TDI to create a "deemer" provision.

Section 3.9803(d) also establishes that the commissioner must grant an exemption in writing. A written record of the exemption will provide a definite record for all concerned parties. TDI does not consider that Insurance Code §1458.051(b) and §1458.055(a) require separate approval or disapproval documents for each affiliate. TDI expects to issue approvals by application, listing any affiliates that were not approved as exceptions to the approval.

TDI does not believe the review process will be time intensive. The review requirement in Insurance Code §1458.055(a) is intended to determine whether the affiliate is subject to a disclaimer of affiliation under Insurance Code §823.010 and to determine if the affiliate's relationship in the contracting entity's network has been disclosed. Section 3.9803, the adopted Provider Network Contracting Entity Exemption of Affiliates Form, and statute do not ask for proof of the relationship, but TDI may consider the submission in future examinations.

Comment: Two commenters suggest that TDI should create an appeal process for exemption disapprovals.

Agency response: TDI disagrees with the comment and declines to make the requested change. Chapter 1458 does not create or reference a specific administrative

3614

appeal process for an exemption disapproval. While TDI will consider and discuss matters related to a disapproval and will work to achieve compliance or remedy any miscommunication or misunderstanding, a person whose application has been denied may seek judicial review under Insurance Code Chapter 36, Subchapter D. TDI considers an additional administrative structure unnecessary.

Comment: A commenter questions whether an “all or none” approval process would be better than having individual approvals. The commenter is concerned that it would be burdensome to keep track of which affiliates are approved and which are not.

Agency Response. TDI disagrees with the comment. As addressed in a prior response to comments TDI does not interpret Insurance Code §1458.051(b) and §1458.055(a) to require a separate approval or disapproval document for each affiliate. TDI expects to issue approvals by application, listing any affiliates that were not approved as exceptions to the approval. In addition, TDI does not believe that it is reasonable to deny an entire organization’s application because one or two affiliate relationships have been included in error or not been adequately disclosed. To clarify that the subsection does require TDI to deny the entire application if the denial should apply to less than all affiliates, TDI has changed the denial phrase to “deny the requested exemption for one or more affiliates.”

Comment: A commenter supports proposed §3.9803(d). The commenter states that the section is consistent with Insurance Code §1458.055 because an affiliate exemption is not effective until the commissioner determines that the affiliate is not subject to a

3614

disclaimer of affiliation under Chapter 823 and that the relationships have been disclosed and clearly defined on the exemption form. The commenter further states that the subsection clarifies the exemption procedure by stating that the commissioner may grant the requested exemption to all listed affiliates, grant the exemption to some listed affiliates, or deny the requested exemption.

Agency Response: TDI appreciates the comment. The rationale for including the requirement has been previously addressed in other comment responses.

Section 3.9803(e)

Comment: Two commenters suggest that the annual update submission not be set during the first calendar quarter of the year, because of the amount of regulatory reports already due in that period. A commenter suggested as an example that the submission be due on August 1.

Agency Response: TDI agrees to change the date of the annual update submission. TDI recognizes that significant reporting occurs in the first quarter of year and Insurance Code §1458.051(c) does not require adding to the first quarter regulatory load. TDI agrees to August 1 because it is not in the first quarter and not at the end of a calendar quarter.

Comment: A commenter supports the requirement to update the form no later than January 31 of each year after the year in which the exemption was granted. The

3614

commenter believes the provision is not unduly burdensome, provides ample time for updating, and is consistent with the underlying law.

Agency Response: TDI appreciates the comment. As addressed in the response to the prior comment, Insurance Code §1458.051(c) does not specify the timing of the annual report. TDI will require the update by August 1 of each year.

Section 3.9805

Comment: A commenter suggests that to avoid possible retroactive application of the adopted section, TDI should not enforce the rules for at least 60 days following the adoption date.

Agency Response: TDI disagrees with the comment. As previously stated in response to comments, TDI has established a reasonable period for contracting entities to make required submissions. Beyond those specific deadlines, the adopted rules will become effective 20 days after the date the adoption order is filed with the secretary of state, as provided by Government Code §2001.036. The adoption of rules does not change the effective date of statutory provisions and requirements.

Comment: A commenter suggests that §3.9805 attempts to operationalize the SB 822 language regarding presumption of express authority and Insurance Code §1458.101 without repeating Insurance Code §1458.101. To enhance compliance, the commenter suggests that TDI clarify the language in §3.9805 by setting out the general rule in Insurance Code §1458.101(b) that mandates obtaining express authority in a revised

3614

subsection (a) before setting out the exception to the general rule in a redesignated subsection (b).

Agency Response: TDI disagrees with the comment. It is unnecessary to repeat Insurance Code §1458.101 to give it effect. In addition, as stated in the proposal, the purpose of §3.9805 is to identify the exception to the express authority by restating Section 2(b) of SB 822 because enacting language of the bill will not always be published with the statutory provisions of Insurance Code Chapter 1458. Section 3.9805(a) provides that express authority cannot be presumed except for the exception listed in §3.9805(c). TDI considers this to be a general requirement of Insurance Code Chapter 1458.101. TDI has not made a change based on this comment.

Comment: A commenter asks how “evergreen contracts” are to be handled.

Agency response: TDI declines to address evergreen contracts separately in these rules. TDI will consider evergreen contracts within the scope of Insurance Code Chapter 1458 and the enacting provisions in Section 2(a) of SB 822, which provides “provider network contract entered into or renewed on or after September 1, 2013. A provider network contract entered into or renewed before September 1, 2013, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.”

Section 3.9805(a)

3614

Comment: A commenter requests that TDI replace the reference to “negotiated fee schedules” with a reference to “payment or reimbursement terms,” which is the language used in Insurance Code §1458.101.

Agency Response: TDI disagrees with the comment, but agrees to define the term “fee schedule.” Fee schedule is used several times in Insurance Code §1458.101(e) and also in Section 2(b) of SB 822 in reference to lines of business in the provider network contract. The phrase “payment or reimbursement terms” is used only in Insurance Code §1458.101(b) in reference to the provider network contract. TDI considers both to apply to the same subject. TDI has determined that it is best to clarify this usage by adding a definition for fee schedule in §3.9801 as “includes payment or reimbursement terms of the provider network contract.” The defined term will apply to all references to fee schedule in §3.9805. TDI has removed the term “negotiated” so that the references to fee schedule will be consistent.

Section 3.9805(a)

Comment: A commenter requests that TDI clarify whether the requirement to notify the provider about all applicable fee schedules means only those fee schedules applicable to that provider.

Agency Response: TDI agrees with the commenter that the requirement to notify the provider about all applicable fee schedules means only those fee schedules applicable to that provider. However, the provider network contractor must always be in compliance with Insurance Code Chapter 1458, including the express authority and

adequate notice requirements under §1458.101(b). TDI has changed the requirement to “The contracting entity must notify the provider about all fee schedules applicable to the provider.”

4. NAMES OF THOSE COMMENTING ON THE PROPOSAL.

For: American Association of Preferred Provider Organizations

For with changes: Cigna, Texas Association of Health Plans, Texas Medical Association.

5. STATUTORY AUTHORITY. TDI adopts the sections under Insurance Code

§§1458.004, 1458.052, 1458.053, 1458.054, 1458.055, 1458.101, and 36.001.

Insurance Code §1458.004 authorizes the commissioner to adopt rules to implement this chapter.

Insurance Code §1458.051(a) requires contracting entities, except persons holding a certificate of authority issued by TDI to engage in the business of insurance in this state or operate a health maintenance organization under Chapter 843, to register with TDI not later than the 30th day after the date the person begins acting as a contracting entity in this state. Insurance Code §1458.051(b) requires a contracting entity that holds a certificate of authority issued by TDI to engage in the business of insurance in this state or is a health maintenance organization to submit to the commissioner an application for exemption from registration under which the contracting entity’s affiliates may access the contracting entity’s network. Insurance Code

3614

§1458.051(c) requires a contracting entity submitting a form under Insurance Code

§1458.051(b) to list its affiliates and update the list on an annual basis.

Insurance Code §1458.052 lists the information that must be disclosed by a contracting entity registering under Insurance Code Chapter 1458.052. Insurance Code §1458.053 allows information to be submitted in a written or electronic format.

Insurance Code §1458.054 authorizes the commissioner to set a reasonable fee necessary to administer the registration process. Insurance Code §1458.101 establishes the requirement for obtaining the provider's express authority in provider network contracts. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTE. The following statutes are affected by this adoption:

Sections 3.9801 - 3.9805 implement and affect Insurance Code, Chapter 1458, including §§1458.001, 1458.051 - 1458.055, and 1458.101.

7. TEXT

Subchapter QQ. Provider Network Contract Registration

§3.9801. Definitions and General Provisions.

3614

(a) Terms in this subchapter have the same meaning as defined and used in Insurance Code Chapter 1458.

(b) The following words and terms when used in this subchapter have the following meanings unless the context clearly indicates otherwise:

(1) Affiliate--Includes each person that is an affiliate under Insurance Code Chapter 823.

(2) Fee schedule--Includes payment or reimbursement terms of the provider network contract.

(3) Primary provider network--A provider network in which the contracting entity submitting the form is the contracting entity for the provider network.

(4) Other provider network--A provider network that may be accessed by the contracting entity submitting the form or the submitting entity's affiliate, but in which the contracting entity for the provider network is not an affiliate of the entity submitting the form.

(5) Subsidiary provider network--A provider network in which the contracting entity or entities for the provider network are an affiliate of the entity submitting the form, except for provider networks that also qualify as a primary provider network.

(6) TDI--Texas Department of Insurance.

(c) In this subchapter:

(1) the term "provider network contracting entity" has the same meaning as contracting entity;

3614

(2) a person begins acting as a contracting entity in this state when the person enters into or offers to enter into direct contracts with one or more providers for the delivery of health care services to covered individuals that serve to create a provider network or networks to be accessed by another party; and

(3) access to a provider network or networks by another party includes access by an affiliate.

§3.9802. Provider Network Contracting Entity Registration Form Required.

(a) TDI adopts the Provider Network Contracting Entity Registration Form by reference.

(b) Except as provided in subsection (c) of this section, each person operating as a contracting entity must submit to TDI a fully completed Provider Network Contracting Entity Registration Form with the required fee established under §3.9804 of this title before the later of:

(1) the 30th day after the date on which the person begins acting as a contracting entity in this state; or

(2) December 1, 2014.

(c) The following contracting entities are not required to register under this section:

(1) a health maintenance organization operating under Insurance Code Chapter 843;

(2) an entity holding a certificate of authority issued by TDI to engage in the business of insurance in this state; or

(3) an affiliate named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 of this title and granted an exemption by the commissioner in writing under §3.9803(d) of this title.

(d) A contracting entity registered under this section must report any changes to the information submitted in the Provider Network Contracting Entity Registration Form submitted under subsection (b) of this section not later than the 30th day after the date on which the change takes effect.

(e) The contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format at the address TDI will provide on the Provider Network Contracting Entity Registration Form.

§3.9803. Provider Network Contracting Entity Exemption of Affiliates Form Required.

(a) TDI adopts the Provider Network Contracting Entity Exemption of Affiliates Form by reference.

(b) Unless the commissioner has granted an affiliate exemption to the contracting entity under this section, each contracting entity that is a health maintenance organization or other entity holding a certificate of authority issued by TDI to engage in the business of insurance in this state must submit to TDI a fully completed

Provider Network Contracting Entity Exemption of Affiliates Form and the required fee established under §3.9804 of this title before the later of:

(1) the 30th day after the date on which the submitting person begins acting as a contracting entity in this state; or

(2) December 1, 2014.

(c) The person submitting the Provider Network Contracting Entity Exemption of Affiliates Form must:

(1) list each affiliate of the contracting entity that will access the provider networks disclosed in the submission or state that the contracting entity has no affiliates;

(2) disclose the provider network contracting relationships between the person who holds a certificate of authority and all affiliates of the person, including:

(A) primary provider networks and the affiliates that have access to the primary provider networks;

(B) subsidiary provider networks and the affiliates that have access to the subsidiary provider networks; and

(C) other provider networks and the affiliates that have access to the other provider networks;

(3) disclose if the contracting entity or an affiliate allows a nonaffiliate to access any network of the contracting entity or affiliate and the name of the contracting entity or affiliate allowing such access.

3614

(d) An affiliate exemption under this section is not effective until the commissioner grants the exemption in writing. The commissioner may grant the requested exemption to all listed affiliates, grant the exemption to some listed affiliates, or deny the requested exemption for one or more affiliates.

(e) Not later than August 1 of each year, a contracting entity that has submitted the Provider Network Contracting Entity Exemption of Affiliates Form under this section must report to the commissioner any changes to the information the contracting entity provided in its Provider Network Contracting Entity Exemption of Affiliates Form or subsequent annual reports, including the addition or removal of any affiliates.

(f) A contracting entity must submit the Provider Network Contracting Entity Exemption of Affiliates Form and subsequent annual reports in a written or electronic format to the address TDI will provide on the Provider Network Contracting Entity Exemption of Affiliates Form.

§3.9804. Required Fees.

(a) A Provider Network Contracting Entity Registration Form under §3.9802 of this title or a Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803 of this title must be accompanied by the required fee of \$1,000.

(b) No fee is required for submitting a change in information under §3.9802 of this title or the annual registration update under §3.9803 of this title.

§3.9805. Express Authority.

3614

(a) Except as provided in subsection (c) of this section, the grant of express authority of a provider for access to their fee schedules cannot be presumed for any line of business for the purposes of compliance with Insurance Code §1458.101.

(b) The contracting entity must notify the provider about all applicable fee schedules, but such notification is not to be, and must not be, construed as:

(1) prohibiting a provider network contracting entity from only contracting with providers who agree to all fee schedules; or

(2) requiring providers to agree to all fee schedules.

(c) For purposes of compliance with Insurance Code §1458.101, a provider's express authority is presumed if:

(1) the provider network contract is in existence before September 1, 2013;

(2) on the first renewal after September 1, 2013, the contracting entity sends a written renewal notice by United States mail to the provider;

(3) the notice described by paragraph (2) of this subsection:

(A) contains a statement that failure to timely respond serves as assent to the renewal;

(B) contains separate signature lines for each line of business applicable to the contract; and

(C) specifies the separate fee schedule for each line of business applicable to the contract, described in any reasonable manner and which may be provided electronically; and

3614

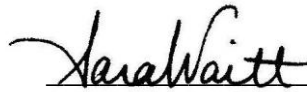
TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 3. Life, Accident, and Health Insurance and Annuities

Adopted Sections
Page 44 of 44

(4) the provider fails to respond within 60 days of receipt of the notice and has not objected to the renewal.

8. CERTIFICATION. This agency certifies that legal counsel has reviewed the adopted sections and finds them to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on October 28, 2014.



Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts §§3.9801 - 3.9805.



Julia Rathgeber
Commissioner of Insurance