Subchapter S. Forms to Request Prior Authorization

Division 1. Texas Standard Prior Authorization Request Forms
28 TAC §19.1803

Division 3. Texas Standard Prior Authorization Request Form for Prescription Drug Benefits
28 TAC §19.1820

INTRODUCTION. The Texas Department of Insurance proposes to amend 28 TAC §19.1803 and §19.1820, concerning Texas standard prior authorization request forms and the Texas standard prior authorization request form for prescription drug benefits.

EXPLANATION. Insurance Code §1369.304(a) requires the Commissioner by rule to prescribe a single, standard form for requesting prior authorization of prescription drug benefits. Insurance Code §1369.305(c) authorizes the Commissioner to consult with the Advisory Committee for the Standard Request Form for Prior Authorization of Prescription Drug Benefits (Advisory Committee) as needed on a subsequent amendment of an adopted rule described by §1369.304. Health benefit plan issuers are required by statute to accept the department-adopted form for any prior authorization of prescription drug benefits required by the plan.

Insurance Code §1369.305 provides that the Advisory Committee must meet every two years to review the form, examine the form's effectiveness and impact on patient safety, and determine whether changes are needed. The Advisory Committee met on December 17, 2020, and recommended substantive revisions to the form and rule. It also recommended that an informal draft of the form and rule be posted for public comment. An informal draft was posted on June 16, 2021, with comments due July 1, 2021. The

Advisory Committee reconvened on September 8, 2021, in a public meeting to review the comments received and make recommendations in response. Advisory Committee recommendations are incorporated into this proposal.

The amendments to §19.1803 delete the definitions for "BIN" (processor identification number) and "PCN" (processor control number), and the paragraphs in the section are renumbered to reflect deletion of the two definitions.

The amendments to §19.1820 revise subsection (a) to add the words "Texas Standard" for consistency with how the form is referenced in the definition of "form" in §19.1803; delete a redundant use of the word "form"; add a form revision date; and remove a reference to the department mailing address. Amendments to subsection (a) also add a statement describing a signature line in the form for the prescribing provider or the prescribing provider's designee to certify the review requested and add a provision for a non-expedited/non-urgent prior authorization review request, including a certification by the prescribing provider or the prescribing provider's designee that applying the standard review time frame is medically appropriate. In addition, amendments to subsection (a) delete the requirement that the prescribing provider or the prescribing provider's designee provide, if available, the BIN, PCN, and pharmacy ID number and clarify that the name of the prescription drug for which prior approval is being requested is the drug name. Amendments to subsection (a) add a requirement that the prescribing provider or the prescribing provider's designee state, in the case of a request for continuation of therapy, whether the patient is complying with the drug therapy regimen and whether the drug therapy regimen is effective. Finally, amendments to subsection (a) make a change to conform to current department language preferences and drafting practices.

Proposed amendments to §19.1820(c) revise the subsection to require that an issuer accept a request for prior authorization made by a prescribing provider using the form on or after the effective date of the section, require that an issuer accept a request for prior authorization using the form that was in place prior to the effective date of the rule for 90 days after the effective date, and make changes to conform to current department language preferences and drafting practices.

Proposed revisions also update the instruction sheet for the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits by deleting a reference to a specific effective date and replacing it with a reference to the rule itself and by removing a reference to a specific version of the ICD classification manual. In addition, proposed revisions to the instruction sheet update the form revision date and make changes to conform to current department language preferences and drafting practices.

Proposed revisions to the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits revise its heading to correlate with the heading on the instruction sheet and revise a corresponding reference to the form in the instruction sheet. Revisions also update the section of the form regarding review to add a provision for non-expedited/non-urgent review requests, checkboxes (one for expedited/urgent review requests, one for non-expedited/non-urgent review requests), and a line for the date of the required signature.

In addition, proposed revisions to the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits remove extraneous pharmacy-related data-collection fields. These fields require the prescribing provider or the prescribing provider's designee to provide, if available, the BIN, PCN, and pharmacy ID number. In the case of a request for continuation of therapy, the fields provide opportunity to add statements in Section V of the form for the prescribing provider or the prescribing provider's designee to designate whether the patient is complying with the drug therapy regimen and whether

the drug therapy regimen is effective. These statement fields are followed by a note indicating that it is not necessary for the prescribing provider or the prescribing provider's designee to complete Sections VIII or IX of the form unless there has been a material change in the information previously provided.

The revised form is available for inspection on the department's website at www.tdi.texas.gov/forms/form10.html.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, associate commissioner, Life and Health Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state or local governments as a result of enforcing or administering them, other than that imposed by statute. Ms. Diaz-Lara made this determination because the proposed changes do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Diaz-Lara does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each of the first five years the proposed amendments are in effect, Ms. Diaz-Lara expects that the proposed amendments will have the public benefits of (1) reducing the administrative time spent by physicians, pharmacies, hospitals, and other health care providers in completing the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits and (2) expediting the delivery of prescription drug benefits to consumers.

In addition, Ms. Diaz-Lara estimates that, while there may be some initial one-time costs associated with the amendments, for each of the first five years the proposed

amendments would be in effect the overall cost of complying with them will be the same as, or lower than, the cost of complying with the current rule. Lower costs for prescribers will result from the elimination of the required completion of certain elements in the form related to continuation of therapy. While some issuers expressed concern that the new fast-track continuation of therapy part of the form could make it harder for issuers to verify requests for continuation, lower costs for issuers could result from the addition of statements in the form for the prescribing provider or the prescribing provider's designee to designate whether the patient is complying with the drug therapy regimen and whether the drug therapy regimen is effective. This additional information could eliminate the need for the issuer to expend time and resources in obtaining that information after a continuation of therapy. Further, the changes to the form do not prevent issuers from having their own form available for use.

The department anticipates that issuers and prescribers could face one-time costs associated with downloading the revised request form and integrating it into their electronic systems. The department estimates that it will take an administrative assistant between 1/2 and one hour to download the revised request form from the department's website and a computer programmer between 1/2 and one hour to integrate the revised request form into the issuer's or prescriber's electronic system. The department does not anticipate any costs to issuers or prescribers other than the cost of uploading the request form to their website or providing a link to the form.

The department's cost analysis of wages for staff to perform required compliance tasks is based on information from the Labor Market and Career Information (LCMI) Department of the Texas Workforce Commission at texaswages.com/WDAWages. Office and administrative support occupations in Texas earn a mean hourly wage of $19.23. Computer programmers working in Texas earn a mean hourly wage of $49.35. In total, the department estimates that issuers and prescribers may spend between $34 and $69

in one-time costs for issuers' or prescribers' staff to upload or download the request form and integrate it into their electronic systems. These costs may not be present if these tasks can be handled as part of the regular duties of an issuer's or prescriber's existing staff.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses or on rural communities. As previously addressed in the cost note, issuers and prescribers may have initial costs in making the revised form available electronically on their respective websites. But this will not have an adverse economic effect on small or micro business or on rural communities required to comply with the proposed amendments, because anticipated savings from the reduction in data submission for prior authorization requests associated with continuation of drug therapy is expected to exceed any one-time costs imposed by the amendments.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The Advisory Committee, consistent with Insurance Code §1369.305, has determined that changes are needed to the current prior authorization form and has recommended that TDI adopt this proposal making those changes. The department has determined that, while this proposal may initially impose additional one-time costs on regulated persons, the overall cost of complying with the amendments will be the same as, or lower than, the cost of complying with the current rule. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on March 28, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on

March 28, 2022. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

SUBCHAPTER S. FORMS TO REQUEST PRIOR AUTHORIZATION
DIVISION 1. TEXAS STANDARD PRIOR AUTHORIZATION REQUEST FORMS
28 TAC §19.1803

STATUTORY AUTHORITY. The department proposes amendments to §19.1803 under Insurance Code §1369.304 and §36.001.

Insurance Code §1369.304 requires that the Commissioner by rule prescribe a single, standard form for requesting prior authorization of prescription drug benefits.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to 28 TAC §19.1803 implement Insurance Code §1369.304.

TEXT.

§19.1803. Definitions.

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

(1) [~~BIN--Processor Identification Number.~~]

[~~(2)~~] CDT--Current Dental Technology Terminology code set maintained by the American Dental Association.

(2) [~~(3)~~] CPT--Current Procedural Terminology code set maintained by the American Medical Association.

(3) [~~(4)~~] Department or TDI--Texas Department of Insurance.

(4) [~~(5)~~] Form--In Division 2 of this subchapter, the Texas Standard Prior Authorization Request Form for Health Care Services. In Division 3 of this subchapter, the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits.

(5) [~~(6)~~] HCPCS--Healthcare Common Procedure Coding System.

(6) [~~(7)~~] Health benefit plan--

(A) a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document offered by a health benefit plan issuer.

(B) Health benefit plan also includes:

(i) group health coverage made available by a school district in accord with Education Code §22.004;

(ii) coverage under the child health program in Health and Safety Code Chapter 62, or the health benefits plan for children in Health and Safety Code Chapter 63;

(iii) a Medicaid managed care program operated under Government Code Chapter 533, or a Medicaid program operated under Human Resources Code Chapter 32;

(iv) a basic coverage plan under Insurance Code Chapter 1551;

(v) a basic plan under Insurance Code Chapter 1575;

(vi) a primary care coverage plan under Insurance Code Chapter 1579; and

(vii) basic coverage under Insurance Code Chapter 1601.

(7) [~~(8)~~] Health benefit plan issuer--An entity authorized under the Insurance Code or another insurance law of this state that delivers or issues for delivery a health benefit plan or other coverage described in Insurance Code §1217.002 or Insurance Code §1369.252.

(8) [~~(9)~~] Health care service--A service to diagnose, prevent, alleviate, cure, or heal a human illness or injury that is provided by a physician or other health care provider. The term includes medical or health care treatments, consultations, procedures, drugs, supplies, imaging and diagnostic services, inpatient and outpatient care, medical devices other than those included in the definition of prescription drugs in Occupations Code §551.003, and durable medical equipment. The term does not include prescription drugs or devices as defined by Occupations Code §551.003.

(9) [~~(10)~~] ICD--International Classification of Diseases.

(10) [~~(11)~~] Issuer--A health benefit plan issuer and the agent of a health benefit plan issuer that manages or administers the issuer's health care services or prescription drug benefits.

(11) [~~(12)~~] NDC--National Drug Code.

(12) [~~(13)~~] NPI number--A provider's or facility's National Provider Identifier.

(13) [~~(14) PCN--Processor Control Number.~~]

[~~(15)~~] Prescription drug--Has the meaning assigned by Occupations Code §551.003.

SUBCHAPTER S. FORMS TO REQUEST PRIOR AUTHORIZATION
DIVISION 3. TEXAS STANDARD PRIOR AUTHORIZATION REQUEST FORM FOR PRESCRIPTION DRUG BENEFITS
28 TAC §19.1820

STATUTORY AUTHORITY. The department proposes amendments to §19.1820 under Insurance Code §1369.304 and §36.001.

Insurance Code §1369.304 requires that the Commissioner by rule prescribe a single, standard form for requesting prior authorization of prescription drug benefits.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to 28 TAC §19.1820 implement Insurance Code §1369.304.

TEXT.

§19.1820. Prior Authorization Request Form for Prescription Drug Benefits, Required Acceptance, and Use.

(a) Form requirements. The Commissioner [~~commissioner~~] adopts by reference the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits [~~form~~], Rev. 10/2021, to be accepted and used by an issuer in compliance with subsection (b) of this section. The form and its instruction sheet are on TDI's website at www.tdi.texas.gov/forms/form10.html [~~; or the form and its instruction sheet can be requested by mail from the Texas Department of Insurance, Rate and Form Review Office, Mail Code 106-1E, P.O. Box 149104, Austin, Texas 78714-9104~~]. The form must be reproduced without changes. The form provides space for the following information:

(1) the name of the issuer or the issuer's agent that manages prescription drug benefits, telephone number, and facsimile (fax) number;

(2) the date the request is submitted;

(3) identification of whether the review requested is an expedited/urgent review or a non-expedited/non-urgent review with a signature line for the prescribing provider or the prescribing provider's designee to certify:

(A) in the case of a request for an expedited/urgent review, that applying the standard review time frame may seriously jeopardize the life or health of the patient or the patient's ability to regain maximum function; or

(B) in the case of a request for a non-expedited/non-urgent review, that applying the standard review time frame is medically appropriate [~~a place to request an expedited or urgent review if the prescribing provider or the prescribing provider's designee certifies that applying the standard review time may seriously jeopardize the life or health of the patient or the patient's ability to regain maximum function~~];

(4) the patient's name, contact telephone number, date of birth, sex, address, and identifying insurance information [~~, and, if available, BIN, PCN, and pharmacy ID numbers~~];

(5) the prescribing provider's name, NPI number, specialty, telephone and fax numbers, address, and contact person's name and telephone number;

(6) for a prescription drug [~~, its~~]:

(A) drug name;

(B) strength;

(C) route of administration;

(D) quantity;

(E) number of days' supply;

(F) expected therapy duration; and

(G) whether the medication is:

(i) a new therapy; or

(ii) continuation of therapy, and if so: [~~,~~]

(I) the approximate date therapy was initiated;

(II) whether the patient is complying with the drug therapy regimen; and

(III) whether the drug therapy regimen is effective;

(7) for a provider administered drug, the HCPCS code, NDC number, and dose per administration;

(8) for a prescription compound drug, its name, ingredients, and each ingredient's NDC number and quantity;

(9) for a prescription device, its name, expected duration of use, and, if applicable, its HCPCS code;

(10) the patient's clinical information, including:

(A) diagnosis, ICD version number (if more than one version is allowed by the U.S. Department of Health and Human Services), and ICD code;

(B) to the best of the prescribing provider's knowledge, the drugs the patient has taken for this diagnosis, including:

(i) drug name, strength, and frequency;

(ii) the approximate dates or duration the drugs were taken;

(iii) patient's response, reason for failure, or allergic reaction;

(C) the patient's drug allergies, if any; and

(D) the patient's height and weight, if relevant;

(11) a list of relevant lab tests, and their dates and values; and

(12) a place for the prescribing provider to:

(A) include pertinent clinical information to justify requests for initial or ongoing therapy, or increases in current dosage, strength, or frequency;

(B) explain any comorbid conditions and contraindications for formulary drugs; or

(C) provide details regarding titration regimen or oncology staging, if applicable.

(13) A prescribing provider may also attach supporting clinical documentation (medical records, progress notes, lab reports, radiology studies, etc.).

(b) Acceptance and use of the form.

(1) If a prescribing provider submits the form to request prior authorization of a prescription drug benefit for which the issuer's plan requires prior authorization, the issuer must accept and use the form for that purpose. An issuer may also have on its website another electronic process a prescribing provider may use to request prior authorization of a prescription drug benefit.

(2) This form may be used by a prescribing provider to request prior authorization of:

(A) a prescription drug;

(B) a prescription device;

(C) formulary exceptions;

(D) quantity limit overrides; and

(E) step-therapy requirement exceptions.

(3) This form may not be used by a prescribing provider to:

(A) request an appeal;

(B) confirm eligibility;

(C) verify coverage;

(D) ask whether a prescription drug or device requires prior authorization; or

(E) request prior authorization of a health care service.

(c) Effective date. An issuer must accept a request for prior authorization of prescription drug benefits made by a prescribing provider using the form on or after the effective date of this section. An issuer must accept a request using the form that was in

place prior to the effective date of this section for 90 days after the effective date [~~September 1, 2015~~].

(d) Availability of the form.

(1) A health benefit plan issuer must make the form available electronically on its website.

(2) A health benefit plan issuer's agent that manages or administers prescription drug benefits must make the form available electronically on its website.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas on February 9, 2022.

DocuSigned by:
James Person
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James Person, General Counsel
Texas Department of Insurance