

Subchapter T. Submission of Clean Claims
28 TAC §21.2819

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §21.2819, concerning extensions of time frame requirements for providers and health plans regarding claim submissions and payments in Insurance Code §§843.337, 843.342, 1301.102, and 1301.137--prompt payment deadlines--due to a catastrophic event. The amendments to §21.2819 implement Senate Bill 1286, 88th Legislature, 2023. The amendments are adopted with changes to the proposed text published in the October 6, 2023 issue of the *Texas Register* (48 TexReg 5819). Section 21.2819 was revised in response to public comments. The adoption also includes nonsubstantive changes to correct drafting errors in the existing rule and to clarify meanings.

REASONED JUSTIFICATION. Amendments to 28 TAC §21.2819 are necessary to implement SB 1286, which allows an entity--an HMO, a preferred provider carrier, an exclusive provider carrier, a physician, or a provider--to qualify for an extension of prompt payment deadlines after a catastrophic event. The Texas Department of Insurance (TDI) has discretion to extend prompt payment deadlines after a catastrophic event by publishing a notice or by approving an entity's request for an extension.

SB 1286 adopted a TDI biennial recommendation. During the COVID-19 pandemic, TDI issued bulletins about extensions of various deadlines. There were questions about processes for these extensions indicating necessary clarifications, and so TDI made a recommendation to the Legislature in its 2022 Biennial Report. TDI's goals for the biennial recommendation were to clarify (1) the standards for entities requesting extensions to

prompt pay deadlines; (2) the duration of the extensions; and (3) TDI's authority to approve, limit, or disapprove requests. The adopted rule clarifies the process for requesting and receiving prompt payment deadline extensions.

Section 21.2819 provides the process for an entity to submit a request to TDI for an extension of prompt payment deadlines due to the effects of a catastrophic event on its normal business operations.

An amendment to subsection (a) clarifies the date range within which an entity must notify TDI following a catastrophic event and request to toll the applicable claims submission and payment deadlines. The amendment specifies that the five-day period begins on the date the event began substantially interfering with the entity's normal business operations, or as specified in a notice published by the commissioner. In response to comment, TDI has changed the proposed text by replacing the term "notification" with "request" in the second sentence of subsection (a).

One amendment to subsection (b) clarifies how entities will electronically communicate with TDI regarding an extension request, and what information they need to provide. Rather than notifying TDI a second time at the end of the business interruption, entities will be required to provide all necessary information in their initial request. Another amendment to subsection (b) eliminates the need for the notification to be a sworn affidavit, as that is an unnecessary additional expense to entities that are experiencing administrative challenges. In response to comment, TDI changed the proposed text by replacing "notification" with "request" in two places.

The adoption also amends the required elements in the paragraphs in subsection (b) to better track extension requests; for example, a physician's or provider's national provider identification number or a managed care carrier's NAIC number will be required.

The amendments to subsection (b)(5) further require a statement that there is a substantial interference to normal business operations due to the catastrophic event to ensure that the statutory requirements are met. In response to comment, TDI has changed the text as proposed to replace "that" with "how" in subsection (b)(5) to ensure that entities provide sufficient information to document the need for an extension of applicable claim deadlines. Some entities contract with third parties or delegees to administer their payment requirements. In that instance, the entity may notify TDI that a catastrophic event interrupted the business operations of the third party and that the interruption is also affecting the entity's business operations. TDI will take this business arrangement into consideration in its review of a request.

The amendments to subsection (b) also require an entity to provide the initial date the catastrophic event caused an interruption in claims submission or processing activities, the expected date of resumption of normal business operations, and information needed to identify entities and locations that are affected by an event. In response to comment, the proposed text has been changed to add the word "reasonably" to subsection (b)(4) to clarify TDI's expectation that entities limit their extension requests to reasonable time frames.

Amendments to subsection (c) clarify the time frame of an extension. The proposed amendments have been changed in response to comment. As adopted, the text provides that the applicable deadlines in 28 TAC §§21.2804, 21.2806 - 21.2809, and 21.2815 will be tolled until the earlier of any date specified in a commissioner notice, the date listed in TDI's approval of a request, or the date the entity is able to resume normal business operations. If the extension is related to a notice from the commissioner, the notice may provide additional information about the duration of the extension. This adopted text

reflects changes TDI made to the proposed text in response to comment, including changes to replace "notification" with "request," to add "the earlier of" to clarify the duration of the extension, and to replace "the date TDI disapproves a request" with "the date the entity is able to resume normal business operations." These changes to the proposed text ensure that an entity does not obtain a temporary extension for a request that TDI ultimately disapproves and clarify that if an entity is able to resume normal business operations sooner than expected, the extension does not continue in effect.

In addition, in new subsection (d) the adopted text sets out a process for requesting an extension request should an entity require more time than a commissioner notice or TDI approval previously allowed. The entity must submit this request at least three business days before the existing extension's expiration explaining why it needs additional time. Since an entity must submit a subsequent extension request in advance, TDI has changed the proposed text to replace "continues" with "is expected to continue." Also, in response to comment, TDI changed the proposed text to replace "notification" with "request," and "substantially impair" with "substantially interfere with" to align with the statutory language. Finally, in response to comment, TDI has changed the proposed text to add a requirement to subsection (d) that an entity notify TDI within three business days of resumption of normal business operations if the resumption occurs sooner than the expiration of an extension.

The amendments add subsection (e) to address the possibility that TDI may need additional information when determining whether to approve a request for an extension. The new subsection also specifies that TDI may disapprove a request if the nature of the event does not meet the definition of a catastrophic event that substantially interferes with an entity's normal business operations or may limit a requested extension if the

duration of interruption to normal business operations is not proportional to the nature of the catastrophic event. The proposed text has been changed by adding "for any request received" to the end of the first sentence in the subsection.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on November 6, 2023.

Commenters: TDI received comments from two commenters. Commenters in support of the proposal with changes were the Texas Association of Health Plans and the Texas Medical Association.

Comments on §21.2819

Comment. One commenter asks TDI to clarify whether the five-day period under §21.2819(a), within which an entity must file a request for an extension in prompt payment deadlines, refers to business days or calendar days.

Agency Response. The five-day period refers to calendar days except that, consistent with 28 TAC §1.7, if the last day is a Saturday, Sunday, or a legal holiday, the period runs until the next day that is neither a Saturday, Sunday, nor a legal holiday.

Comment. One commenter recommends that TDI differentiate between the process for an entity to obtain an extension related to a notice published by TDI and an extension that is requested but is not related to a notice published by TDI. The commenter states that this approach would more closely track the statutory provisions relating to extensions, as amended by SB 1286, and suggests additional language in subsections (a) - (d), along with two additional subsections that would separately address extensions

related to a TDI notice and extension requests not related to a TDI notice. The commenter also points out that "notification" and "request" are not synonymous.

Agency Response. TDI disagrees that the statute requires a substantive difference in the process for an extension, depending on whether TDI publishes a notice recognizing a catastrophic event has occurred, and declines to make the suggested changes to create a bifurcated process. The proposed rule creates a single process because in both cases, the same information is needed to verify the entity's need for an extension and allow TDI to share information with the public related to extensions. TDI expects the process set forth in this rule to sufficiently address most catastrophic events; however, there is a wide range of potential catastrophic events.

As amended by SB 1286, the statute gives TDI flexibility to respond to such events on a case-by-case basis by issuing a notice. If needed, TDI can include specific instructions within a catastrophic event bulletin. In the past (for example, in response to the COVID-19 pandemic in 2020), TDI has issued bulletins to health care providers, insurers, and HMOs in conjunction with a disaster declaration issued by the governor or commissioner. Bulletins are a practical, scalable mechanism for TDI to dynamically meet the needs of affected entities following a catastrophic event.

TDI agrees with the commenter that "notification" and "request" have different meanings. To reflect the process more accurately, TDI has changed the text as proposed to replace each use of the term "notification" in §21.2819 with the term "request."

Comment. One commenter recommends that, because the statute refers to TDI approving an extension due to a catastrophic event that "substantially interferes" with the entity's "normal business operations," such interference must impact both claims

submission or processing activities, and other business operations that are not related to claims submission or processing activities. The commenter asserts that this interpretation is appropriate because the definition of catastrophic event in rule already includes the condition that the event "causes an interruption in the claims submission or processing activities of an entity for more than two consecutive business days."

Agency Response. TDI disagrees that the statutory text, as amended by SB 1286, expanded the type of business operations that must be impacted by a catastrophic event to include operations both related and unrelated to claims submission or processing. The statutory text cited was not newly added, but rather reorganized by SB 1286.

Comment. One commenter expresses concerns about the proposed five-day notice period being tied to the date the event began substantially interfering with normal business operations, rather than being tied to the catastrophic event itself. The commenter states that this change could make it more difficult for TDI to assess whether a notice has been filed according to the timing required by the rule.

Agency Response. TDI believes that basing the time frame on the date the catastrophic event began substantially interfering with normal business operations is appropriate. There are various types of catastrophic events that could impact different entities in different ways and at different times. Even when TDI publishes a notice or bulletin to address a particular catastrophic event, there is not necessarily a single date that applies to all entities. The definition of catastrophic event in §21.2802(5), which TDI did not propose to amend, requires that the event cause an interruption in the entity's claims submission or processing activities for more than two consecutive business days. There is no incentive for an entity to delay submitting a request to TDI. The applicable deadlines

are tolled starting with the date identified in §21.2819(b)(3), which may not be more than five days from the date the notification is submitted.

Comment. One commenter asks TDI to clarify that, even in instances of TDI's publication of a notice, TDI will provide reasonable and prompt timelines for when a notification must be submitted by an entity.

Agency Response. TDI declines to make the requested clarification. Section 21.2819(a) requires an entity to send notice of an extension request to TDI within five days of the date the catastrophic event began substantially interfering with the normal business operations of the entity, or as specified in a notice published by the commissioner regarding the catastrophic event.

Comment. One commenter opposed the proposed removal of the requirement in subsection (b)(1) that entities submit extension notifications in the form of a sworn affidavit. The commenter suggests that the absence of a sworn affidavit would provide less recourse if an entity submits false information, and could make it more likely for entities to submit inappropriate extension requests in order to toll prompt payment deadlines. The commenter said that the removal of the affidavit requirement could cause TDI to incur a larger and unavoidable administrative burden to timely reject or disapprove repeated bad faith requests, and would result in delays in payments by managed care carriers to providers, which would ultimately undermine patient care.

Agency Response. TDI disagrees with the commenter and declines to make a change. Requiring a sworn affidavit creates unnecessary administrative costs and barriers for entities affected by catastrophic events. While the financial cost of a notarization in itself

may be minimal, the potential burden on entities in obtaining a notarization following a catastrophic event may be significant. Moreover, there are existing mechanisms in the Insurance Code to ensure accountability by providing TDI with recourse for false submissions to TDI. For example, Insurance Code §841.704 and §843.464(a)(2) establish criminal penalties for submitting a required statement or report to the commissioner that is false. TDI has no less recourse to pursue that fraud than it would if the fraud was contained in a sworn affidavit. In addition, an insurer may be subject to a penalty for unfair claim settlement practices for not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim under Insurance Code §542.003(b)(4). Also, insurers that do not comply with the prompt payment provisions of Insurance Code Chapter 542, Subchapter B, concerning prompt payment of claims, could be liable for damages, including interest penalties. Furthermore, TDI is unaware of any evidence to support the claim that removing the affidavit requirement will result in an increase in wrongful requests to extend prompt payment deadlines. As previously stated, statutory mechanisms exist to ensure accountability in the submission of extension requests. Entities are encouraged to notify TDI if they suspect that another entity has abused this process.

Comment. A commenter recommends that TDI amend subsection (b)(2) to require an entity requesting an extension of prompt payment deadlines following TDI's publication of a notice allowing an extension after a catastrophic event to provide certain additional information. Specifically, the commenter recommends that the request demonstrate that (1) the event impacting the entity is the same one specified in the notice published by the commissioner, and (2) the entity falls within the scope of the commissioner's notice.

Agency Response. TDI declines to make the requested change. The rule already requires in subsection (b)(2) that the entity identify the specific nature of the catastrophic event. TDI does change the text as proposed for subsection (b)(5) to replace "that" with "how" to strengthen the requirement for the entity to state *how* the catastrophic event is substantially interfering with the entity's normal business operations.

Comment. A commenter expresses concern that the requirement in proposed §21.2819(b)(4) for entities to identify the date they expect to resume operations might encourage entities to overstate the expected time frame to avoid the statute's prompt payment timelines. The commenter suggests deleting the requirement that an entity identify the date it expects to resume normal business operations and adding a new paragraph to subsection (b) to require an entity to identify the date the entity reasonably expects the claims interruption to cease. The commenter also recommends adding a new requirement that entities inform TDI within five days of the interruption to claims submission or processing activities ceasing to exist.

Agency Response. TDI agrees in part with the commenter and has changed the text as proposed to add the term "reasonably" to subsection (b)(4). TDI has also added a new provision in subsection (d) requiring an entity to notify TDI within three business days of the date the entity resumed normal business operations if they are able to do so before the date the extension would otherwise expire.

Comment. One commenter suggests expanding §21.2819(b) to require entities to attest that they will take reasonable steps to mitigate the effects of the catastrophic event.

Agency Response. TDI declines to add the suggested text. Entities already have sufficient incentive to mitigate business interruptions, and TDI encourages entities to take steps to mitigate the effects of a catastrophic event.

Comment. One commenter recommends adding language to require that, for requests for an extension in prompt payment deadlines that are not related to a TDI notice, the entity state if and how the catastrophic event is interfering with its normal business operations that are not related to claims submission or processing activities.

Agency Response. TDI declines to add the suggested text. SB 1286 conditions TDI's approval of an extension request on a catastrophic event substantially interfering with an entity's normal business operations. The change to the text as proposed in §21.2819(b)(5) to require an entity to state "how" (rather than "that," as in the proposed rule) the catastrophic event is substantially interfering with the entity's normal business operations addresses the need for entities to explain the impact of the catastrophic event.

Comment. One commenter recommends adding a new paragraph to subsection (b) requiring an entity to inform TDI (if an extension is in place) when the entity either ceased having a claims interruption or no longer experienced substantial interference in normal business operations as a result of the catastrophic event. The commenter recommends that the deadline extension automatically terminate as of the earlier of those dates (even if a longer time frame was approved by the TDI request).

Agency Response. TDI declines to make the requested changes. TDI believes that the requirement in subsection (b)(4) that an entity identify the date it reasonably expects to resume normal operations establishes an appropriate safeguard in the effective use of the

deadline-extension process following a catastrophic event. Entities are encouraged to notify TDI if they suspect that another entity has abused this process.

Comment. One commenter expresses concern that §21.2819(c) allows a deadline to be tolled before TDI has affirmatively disapproved a request and argues that this is not consistent with the statute. The commenter notes that there is no incentive for TDI to timely process requests, and if TDI fails to act, the deadlines could be tolled indefinitely. The commenter suggests changes to subsection (c) to clarify that the end date for counting the days for tolling must be framed as "the earlier of" the date the interruption in claims submission or processing activities ceased; the date listed in the TDI notice or in TDI's approval; or, for extensions based on requests from entities, the date the catastrophic event ceased substantially interfering with the entity's normal business operations. The commenter also states that the statutory language clearly requires TDI to approve an entity's request before any extension or tolling is allowed.

Agency Response. TDI agrees with the commenter and has changed the text of subsection (c) as proposed to add "the earlier of" and to add "or the date the entity is able to resume normal business operations" in place of "the date TDI disapproves a request." TDI is normally able to process extension requests within a few business days. Based on experience to date, TDI staff believes the vast majority of extension requests will be valid, and it will be rare that TDI needs to limit or disapprove an extension. By deleting "the date TDI disapproves a request," the rule will not allow any exemption without TDI's approval.

Comment. One commenter recommends that, if TDI does not add language to conform to the commenter's recommendation that the rule differentiate between extension requests and extension notifications, TDI use consistent language within subsection (d) and not conflate the two terms.

Agency Response. TDI agrees with the comment and has changed the text as proposed to replace six instances of the term "notification" in §21.2819(a) - (d) with the term "request."

Comment. One commenter notes that TDI uses the term "substantially impair" in lieu of "substantially interfere" in subsection (d) with regard to requests for additional extensions in prompt payment deadlines. The commenter recommends that, for consistency, TDI use the term "substantially interfere with" rather than "substantially impair" normal business operations with regard to requests for additional extensions in prompt payment deadlines.

Agency Response. TDI agrees and has made the requested change to the text as proposed in subsection (d).

Comment. One commenter recommends that TDI revise subsection (e) to conform with the commenter's other recommended changes to the rule. The commenter recommends adding "or any notification or request received" at the end of the first sentence of subsection (e) in reference to the requirement that TDI contact an entity requesting an extension in prompt payment deadlines if TDI needs more information from the entity. The commenter also recommends that the rule contain separate conditions that must be met for TDI's disapproval of an extension request: (1) failure to meet the definition of

catastrophic event; or (2) a determination of no substantial interference with the entity's normal business operations, including claims submission or processing activities. The proposed rule establishes a disapproval process based on the failure of an event to meet the definition of a catastrophic event that substantially interferes with the entity's normal business operations. The commenter also recommends that TDI delete the requirement in subsection (e) that the limitation be based on a lack of proportionality between the duration of the interruption to normal business operations and the nature of the catastrophic event. The commenter's suggested language would replace the duration of interruption to normal business operations with the duration of substantial interference with normal business operations.

Agency Response. As previously stated, TDI has made a number of changes to the text as proposed in response to the comments received, including replacing instances of the term "notification" in §21.2819(a) - (d) with the term "request." TDI agrees in part with the request to change in the first sentence of subsection (e), regarding additional information, by adding "for any request received." TDI declines to adopt the commenter's request to include the term "notification." Using only the term "request" is in keeping with TDI's intent to create a single process for extension requests. As addressed previously, TDI declines to create a bifurcated process. Separate standards for disapproving or limiting an extension request, whether or not the request relates to a TDI notice are not needed; in either case, the request must meet the definition of a catastrophic event.

Comment. One commenter suggests adding new subsection (f) to address the process related to TDI disapproving or limiting an extension request. The commenter suggests that TDI should provide the entity with a detailed explanation of the rationale for the

disapproval or limitation and provide an appeals process. The commenter states that an appeals process is crucial to avoid claims that TDI's review of an entity's extension request occurs without the entity's having recourse as to the impact of a certain event on the entity's ability to do business.

Agency Response. TDI declines to add the requested new subsection. Catastrophic events inevitably create significant burdens on communities. Recognizing this, TDI historically has issued bulletins to provide those affected--including providers, insurers, HMOs, and others--with information to help them address the challenges that ensue. Bulletins provide straightforward information that is designed to address entities' most pressing challenges following a catastrophic event. If entities have concerns about a disapproval or limitation following an extension request that they submitted to TDI, they are encouraged to contact TDI to discuss their concerns.

Comment. One commenter recommended conforming changes to the quarterly claims submission reporting requirements in §21.2821(c)(17), to replace "certifications" of catastrophic events with "notifications and requests."

Agency Response. TDI declines to make the requested change because §21.2821 is outside the current rulemaking.

Subchapter T. Submission of Clean Claims

28 TAC §21.2819

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.2819 under Insurance Code §§843.151, 843.337, 1301.007, 1301.102, and 36.001.

Insurance Code §843.151 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 843.

Insurance Code §843.337 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician's or provider's request for an extension of claim submission deadlines due to a catastrophic event that substantially interferes with normal business operations.

Insurance Code §1301.007 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 1301.

Insurance Code §1301.102 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician's or provider's request for an extension of claim submission deadlines due to a catastrophic event that substantially interferes with normal business operations.

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.

TEXT.**§21.2819. Catastrophic Event.**

(a) An MCC, a physician, or a provider must notify the Texas Department of Insurance (TDI) if, due to a catastrophic event, it is unable to meet the deadlines in §21.2804 of this title (relating to Requests for Additional Information from Treating

Preferred Provider), §21.2806 of this title (relating to Claims Filing Deadline), §21.2807 of this title (relating to Effect of Filing a Clean Claim), §21.2808 of this title (relating to Effect of Filing Deficient Claim), §21.2809 of this title (relating to Audit Procedures), and §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period), as applicable. The entity must send a request required under this section to TDI within five days of the date the catastrophic event began substantially interfering with the normal business operations of the entity, or as specified in a notice published by the commissioner regarding the catastrophic event.

(b) An entity must send the request required under this section to TDI by email to PromptPay@tdi.texas.gov, unless an alternative electronic method is provided by TDI for a specified event. The request must:

(1) be from:

(A) if for a physician or a provider, the physician, provider, office manager, administrator, or their designee; or

(B) if for an MCC, a corporate officer or a corporate officer's designee;

(2) identify the specific nature of the catastrophic event;

(3) identify the first date the catastrophic event caused an interruption in the claims submission or processing activities of the physician, provider, or MCC;

(4) identify the date the physician, provider, or MCC reasonably expects to resume normal business operations;

(5) state how the catastrophic event is substantially interfering with the entity's normal business operations;

(6) include the contact information for the physician, provider, or MCC, including each entity's name, email address, phone number, and:

(A) if for a physician or provider, the national provider identification number; or

(B) if for an MCC, the entity's NAIC number; and

(7) include the physical address of each business or practice location affected by the catastrophic event.

(c) A request under this section tolls the applicable deadlines in §§21.2804, 21.2806, 21.2807, 21.2808, 21.2809, and 21.2815 of this title for the number of days between the date identified in subsection (b)(3) of this section and the earlier of any date specified in a notice published by the commissioner or listed in TDI's approval of a request, or the date the entity is able to resume normal business operations.

(d) If a catastrophic event is expected to continue to substantially interfere with an entity's normal business operations past the date in a notice published by the commissioner or in TDI's approval of an extension request, then the entity must send an additional request meeting the requirements of this section to TDI at least three business days before the expiration of the existing extension. The new request must explain why an additional extension is needed. If an entity resumes normal business operations sooner than the date the extension would otherwise expire, the entity must send a notification to TDI of the date the entity resumed normal business operations, no later than three business days after that date.

(e) TDI will contact the physician, provider, or MCC if more information is needed for any request received. TDI may disapprove a request if the nature of the event does not meet the definition of a catastrophic event that substantially interferes with the entity's normal business operations. TDI may limit a requested extension if the identified

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duration of interruption to normal business operations is not proportional to the nature of the catastrophic event.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on February 26, 2024.

DocuSigned by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance

The amendments to 28 TAC §21.2819 are adopted.

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C Brown
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Cassie Brown
Commissioner of Insurance

Commissioner's Order No. 2024-8550