Subchapter T. Submission of Clean Claims
28 TAC §21.2819

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §21.2819, concerning extensions of time frame requirements on providers and health plans for claim submissions and payments in Insurance Code §§843.337, 843.342, 1301.102, and 1301.137--prompt pay deadlines--due to a catastrophic event. The proposed amendments to §21.2819 implement Senate Bill 1286, 88th Legislature, 2023.

EXPLANATION. This proposal implements SB 1286, which provides two ways that an entity--an HMO, a preferred provider carrier, an exclusive provider carrier, a physician, or a provider--can qualify for an extension of a prompt pay deadline after a catastrophic event. An entity can extend its prompt pay deadlines after a catastrophic event either under an extension granted by commissioner notice or by TDI approving a request for an extension submitted by the entity.

SB 1286 is 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; TDI agreed clarifications were necessary and made a recommendation to the legislature in its Biennial Report. Based on this, the biennial recommendation's goal was 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. This proposal provides needed clarity in the process for requesting and receiving prompt pay deadline extensions.

Section 21.2819 provides the process for an entity to notify TDI about its need for an extension of prompt pay deadlines due to the effects of a catastrophic event on its normal business operations.

An amendment to subsection (a) clarifies the date range in which an entity must notify TDI that a catastrophic event has interfered with normal business operations.

One amendment to subsection (b) clarifies how entities will electronically communicate with TDI regarding an extension, 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 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.

Amendments are also proposed to the required notification elements 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 (MCC's) NAIC number will be required. The proposed amendments also require a statement that there is a substantial interference to normal business operations, to ensure that the statutory requirements are met. Some entities contract with third parties or delegees to administer their payment requirements. In that instance, the entity will notify TDI that a catastrophic event interrupted the business operations of the third party and that interruption is also affecting the entity's business operations. TDI will take this business arrangement into consideration in its review of a request.

The proposed amendments also require an entity to provide the initial date of the interference, the expected end date, and information needed to identify entities and locations that are affected by an event.

Proposed amendments to subsection (c) clarify the time frame of an extension. If the extension is related to a notice from the commissioner, the notice will specify the extension's expected end date. For extension requests independent of a commissioner notice, the applicable deadlines in 28 TAC §§21.2804, 21.2806, 21.2807, 21.2808, 21.2809, and 21.2815 will be tolled until TDI either disapproves the request or sends an approval with a specified end date.

In addition, in new subsection (d) the proposal 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.

The proposed 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 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 amendments clarify that extensions will be based on the date the catastrophic event begins substantially interfering with normal business operations rather than requiring the date of the event itself, as events such as pandemics may affect business operations at different times.

Lastly, the proposed amendments include nonsubstantive editorial and formatting changes to conform the section to the agency's current drafting style and usage guidelines and to improve the rule's clarity. These changes include modifying the references to TDI for consistency.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, 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 and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Ms. Bowden made this determination because the proposed amendments 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. Bowden does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§843.337, 843.342, 1301.102, and 1301.137.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code §§843.337, 843.342, 1301.102, and 1301.137 because the amendments do not impose requirements beyond those in the statutes and the current rule. The existing rule addresses notifying TDI any time a governed entity is unable to meet a prompt pay deadline. SB 1286 also affords a governed entity the ability to qualify for an extension upon TDI's approval of a request. The proposed amendments specify the process for these distinct options. As a result, the costs associated with submitting notifications to TDI under the proposed amendments result from the enforcement or administration of current regulations and SB 1286.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will have no adverse effect on small or micro businesses or rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal, which explains that associated costs are attributable to SB 1286 and not the proposed rule, also applies to these small and micro businesses and rural communities.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose an increased cost on regulated persons. However, even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §21.2819 are necessary to implement legislation. The proposed amendments implement Insurance Code §§843.337, 843.342, 1301.102, and 1301.137, as amended by SB 1286. The cost analysis in the Public Benefit and Cost Note section of this proposal explains that any costs for regulated persons are attributable to SB 1286 and not the proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed 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. TDI 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on Nov. 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Chief Clerk's Office, 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 Chief Clerk's Office, 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 TDI no later than 5:00 p.m., central time, on Nov. 6, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes 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 Chapter 843.

Insurance Code §843.337 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician 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 Chapter 1301.

Insurance Code §1301.102 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician 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.

CROSS-REFERENCE TO STATUTE. Section 21.2819 implements Insurance Code §§843.337, 843.342, 1301.102, and 1301.137.

TEXT.

§21.2819. Catastrophic Event.

(a) An MCC, a physician, or a provider must notify the Texas Department of Insurance (TDI) [~~department~~] 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 [~~Claim~~] 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 [~~a~~] 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 the notification required under this section [~~subsection~~] to TDI [~~the department~~] 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 [~~Within 10 days after the entity returns to normal business operations, the~~] entity must send the notification required under this section [~~a certification of the catastrophic event~~] to TDI [~~the Texas Department of Insurance~~] by email to PromptPay@tdi.texas.gov [~~promptpay@tdi.texas.gov~~], unless an alternative electronic method is provided by TDI for a specified event. The notification [~~certification~~] must:

(1) be [~~in the form of a sworn affidavit~~] from:

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

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

(2) identify the specific nature [~~and date~~] of the catastrophic event; [~~and~~]

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

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

(5) state that 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 notification [~~valid certification to the occurrence of a catastrophic event~~] 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 any date specified in a notice published by the commissioner or listed in TDI's approval of a request, or the date TDI disapproves a request. [~~as of the date of the catastrophic event~~.]

(d) If a catastrophic event continues to substantially impair 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 notification meeting the requirements of this section to TDI at least three business days before the expiration of the existing extension. The new notification must explain why an additional extension is needed.

(e) TDI will contact the physician, provider, or MCC if more information is needed. 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 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 proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on Sept. 20, 2023.

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