

SUBCHAPTER X. PREFERRED AND EXCLUSIVE PROVIDER PLANS
DIVISION 1. GENERAL REQUIREMENTS
28 TAC §3.3705 and §3.3708

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC Chapter 3, Subchapter X, Division 1, §3.3705, relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations and §3.3708, relating to Payment of Certain Basic Benefit Claims and Related Disclosures. The amendments are necessary because of amendments made to Texas Insurance Code Chapter 1467.

EXPLANATION. SB 481, 84th Legislature, Regular Session (2015) amended Insurance Code Chapter 1467 (Out-of-Network Claim Dispute Resolution). As a result, TDI must make conforming changes to 28 TAC Chapter 3, Subchapter X.

Parts of both §3.3705 and §3.3708 relate to the mediation process mandated by Chapter 1467. SB 481 lowered the threshold for mediation to amounts greater than \$500, for services provided on or after September 1, 2015. The rules at §3.3705 and §3.3708 need to be updated to include these provisions and make nonsubstantive changes to conform to agency style and usage guidelines.

A description of changes to specific sections follows.

Section 3.3705. The proposal adds assistant surgeons to the list of covered hospital-based physicians and lowers the threshold amount for teleconferences and mediation to amounts greater than \$500. The proposal also deletes redundant material and makes nonsubstantive changes to conform to agency style and usage guidelines.

Section 3.3708. The proposal lowers the threshold amount for teleconferences and mediation to amounts greater than \$500.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Patricia Brewer, team lead for the Life and Health Regulatory Initiatives Team, has determined that during each year of the first five years that the proposed amendments are in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the sections, other than that imposed by the statute. There will not be any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Brewer has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administration and enforcement of the amended sections will be: (i) assurance that TDI's rules comply with Insurance Code Chapter 1467 as amended by SB 481, and (ii) a possible reduction in balance billing of patients for some out-of-network services. There is no anticipated economic cost to persons who are required to comply with the proposed amendments beyond that imposed by the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined that these proposed amendments will not have an adverse economic effect on small or micro businesses because, to the extent they contain requirements, they simply implement statutory requirements or contain minor revisions to existing forms. Therefore, in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI invites the public and affected persons to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on June 27, 2016. Send written comments by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comments by mail to Patricia Brewer, Team Lead, Life and Health Regulatory Initiatives Team, Regulatory Policy Division, MC 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to LHLComments@tdi.texas.gov. You must submit any request for a public hearing separately to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to

chiefclerk@tdi.texas.gov before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. These amendments are proposed under Insurance Code §§1467.001, 1467.003, 1467.051, 1301.007, 1301.0042, and 36.001, and amendments made by Section 5 of SB 481, 84th Legislature, Regular Session (2015) to Insurance Code §1467.051(a)(1).

Section 1467.001 contains definitions, including a definition for the facility-based physicians to whose billings Chapter 1467 applies.

Section 1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Chapter 1467. Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1301.007 authorizes the commissioner to adopt rules to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Section 1301.0042 provides that a provision of the Insurance Code or another insurance law of Texas that applies to a preferred provider benefit plan applies to an exclusive provider benefit plan except to the extent that the commissioner determines the provision to be inconsistent with the function and purpose of an exclusive provider benefit plan.

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

CROSS REFERENCE TO STATUTE. The proposed amendments implement Insurance Code Chapter 1467 and Section 5 of SB 481, 84th Legislature, Regular Session (2015), which amends Insurance Code §1467.001(4) and §1467.051(a)(1). Specifically, the amendments to 28 TAC §3.3705 implement §1467.001(4) and §1467.051(a)(1), and the amendment to §3.3708 implements §1467.051(a)(1).

TEXT.

SUBCHAPTER X. PREFERRED AND EXCLUSIVE PROVIDER PLANS

DIVISION 1. GENERAL REQUIREMENTS

§3.3705. Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations.

(a) - (e) (No change.)

(f) Notice of rights under a network plan required. An insurer must include the notice specified in Figure: 28 TAC §3.3705(f)(1)[,] for a preferred provider benefit plan that is not an exclusive provider benefit plan[,], or Figure: 28 TAC §3.3705(f)(2)[,] for an exclusive provider benefit plan[,], in all policies, certificates, disclosures of policy terms and conditions provided to comply with [pursuant to] subsection (b) of this section, and outlines of coverage in at least 12-point [12-point] font:

(1) Preferred provider benefit plan notice.

Attached Graphic

Figure: 28 TAC §3.3705(f)(1)

Texas Department of Insurance Notice

- You have the right to an adequate network of preferred providers (also known as "network providers"). If you believe that the network is inadequate, you may file a complaint with the Texas Department of Insurance.
- You have the right, in most cases, to obtain estimates in advance:
 - o from out-of-network providers of what they will charge for their services; and
 - o from your insurer of what it will pay for the services.
- You may obtain a current directory of preferred providers at the following website: [website address to be filled out by the insurer or marked inapplicable if the insurer does not maintain a website providing information regarding the insurer or the health insurance policies offered by the insurer for use by current or prospective insureds or group contract holders] or by calling [to be filled out by the insurer] for assistance in finding available preferred providers.
- If you are treated by a provider or facility that is not a preferred provider, you may be billed for anything not paid by the insurer.
- If the amount you owe to an out-of-network facility-based radiologist, anesthesiologist, pathologist, emergency department physician, neonatologist, or assistant surgeon is greater than \$500 (not including your copayment, coinsurance, and deductible responsibilities) for services received in a network facility, you may be entitled to have the parties participate in a teleconference, and, if the

result is not to your satisfaction, in a mandatory mediation at no cost to you. You can learn more about mediation at the Texas Department of Insurance website:

www.tdi.texas.gov/consumer/cpmmediation.html

• If directory information is materially inaccurate and you rely on it, you may be entitled to have an out-of-network claim paid at the in-network percentage level of reimbursement and your out-of-pocket expenses counted toward your in-network deductible and out-of-pocket maximum.

[Figure: 28 TAC §3.3705(f)(1)]

[Texas Department of Insurance Notice]

~~• You have the right to an adequate network of preferred providers (also known as "network providers").~~
~~o If you believe that the network is inadequate, you may file a complaint with the Texas Department of Insurance.]~~

~~o If you relied on materially inaccurate directory information, you may be entitled to have an out-of-network claim paid at the in-network percentage level of reimbursement and your out-of-pocket expenses counted toward your in-network deductible and out-of-pocket maximum.]~~

~~• You have the right, in most cases, to obtain estimates in advance:]~~

~~o from out-of-network providers of what they will charge for their services; and]~~

~~o from your insurer of what it will pay for the services.]~~

~~• You may obtain a current directory of preferred providers at the following website: [website address to be filled out by the insurer or marked inapplicable if the insurer does not maintain an Internet website providing information regarding the insurer or the health insurance policies offered by the insurer for use by current or prospective insureds or group contract holders] or by calling [to be filled out by the insurer] for assistance in finding available preferred providers. If the directory is materially inaccurate, you may be entitled to have an out-of-network claim paid at the in-network level of benefits.]~~

~~• If you are treated by a provider or hospital that is not a preferred provider, you may be billed for anything not paid by the insurer.]~~

~~• If the amount you owe to an out-of-network hospital-based radiologist, anesthesiologist, pathologist, emergency department physician, or neonatologist is greater than \$1,000 (not including your copayment, coinsurance, and deductible responsibilities) for services received in a network hospital, you may be entitled to have the parties participate in a teleconference, and, if the result is not to your satisfaction, in~~

~~a mandatory mediation at no cost to you. You can learn more about mediation at the Texas Department of Insurance website: www.tdi.texas.gov/consumer/cpmmediation.html.~~

(2) (no change.)

(g) - (q) (No change.)

§3.3708. Payment of Certain Basic Benefit Claims and Related Disclosures.

(a) - (d) (No change.)

(e) When services are rendered to an insured by a nonpreferred facility-based physician and the difference between the allowed amount and the billed charge is at least ~~\$500~~~~[\$1,000]~~, the insurer must include a notice on the applicable explanation of benefits that the insured may have the right to request mediation of the claim of an uncontracted facility-based provider under Insurance Code Chapter 1467 and may obtain more information at www.tdi.texas.gov/consumer/cpmmediation.html. An insurer is not in violation of this subsection if it provides the required notice in connection with claims that are not eligible for mediation.

(f) (No change.)

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

Issued at Austin, Texas, on May 9, 2016.



Norma Garcia
General Counsel
Texas Department of Insurance