

SUBCHAPTER UU. MACHINE-READABLE FILES
28 TAC §§21.5501 - 21.5503

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §§21.5501 - 21.5503, concerning machine-readable files. These sections implement House Bill 2090, 87th Legislature, 2021, which amended the Texas Insurance Code by adding Chapter 1662, concerning Health Care Cost Transparency.

EXPLANATION. New Insurance Code Chapter 1662 requires health benefit plan issuers or administrators to publish to the internet certain information in three machine-readable files. Specifically, Insurance Code §1662.103 requires issuers or administrators to publish: rate information for covered health care services and supplies; unique billed charges and allowed amounts for covered services provided by out-of-network providers; and negotiated rates for prescription drugs. Insurance Code §1662.107 requires the department to prescribe by rule the form and manner in which the machine-readable files must be made available.

The proposed new sections are described in the following paragraphs.

Section 21.5501. New §21.5501 identifies the types of health benefit plans that are, and are not, subject to the requirements to produce machine-readable files. The section also specifies when issuers must begin publishing machine-readable files, including providing additional time for smaller issuers. Additionally, the new section provides that issuers are not required to publish machine-readable files under this proposal's requirements until the federal Departments of Labor, Health and Human Services, and Treasury begin enforcing the corresponding federal Transparency in

Coverage rules (26 C.F.R. §§54.9815-2715A1 through A3; 29 C.F.R. §§2590.715-2715A1 through A3; and 45 C.F.R. §§147.210-.212), or January 1, 2024, whichever is earlier. As of the date of this publication, federal guidance states that the federal Departments will defer enforcement of the requirement that plans and issuers publish machine-readable files relating to prescription drug pricing pending further federal rulemaking, while enforcement of the requirements related to in-network rates and out-of-network allowed amounts and billed charges will be deferred until July 1, 2022. See *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49* (available at dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/aca-part-49.pdf).

Section 21.5502. New §21.5502 addresses various details concerning the form and manner in which machine-readable files are to be published, including transport mechanisms, nonproprietary data, and file-naming conventions. The new section also provides a safe harbor for issuers that are compliant with federal machine-readable file requirements.

Section 21.5503. New §21.5503 describes the data schemas that specify the data fields that must be included in each machine-readable file and the technical parameters associated with each data field. The department has published the data schemas on its website.

The department received comments at a stakeholder meeting on October 27, 2021, as well as via a request for information posted on the department's website on September 28, 2021. The department considered those comments when drafting this proposal.

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 new sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by statute. Ms. Bowden made this determination because the proposed sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections. Any costs to state or local governments with applicable health benefit plans would result from the enforcement or administration of the statute, not from the proposed sections.

Ms. Bowden 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 year of the first five years the proposed new sections are in effect, Ms. Bowden expects that administering and enforcing the proposed sections will have the public benefit of ensuring that the department's rules properly implement new Insurance Code Chapter 1662, which improves transparency and consumer access to health care cost information.

Ms. Bowden expects that the proposed new sections will not increase the cost of compliance with Insurance Code Chapter 1662 because the sections do not impose requirements beyond those in the statute. Any costs associated with the department's efforts to ensure that health benefit plan issuers or administrators comply with the publication of the required information are attributable to statute, not from the proposed new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed new sections will not have an adverse economic effect on rural communities or on small or micro businesses. Any associated costs are attributable to Insurance Code Chapter 1662 and not to the proposed sections.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a possible cost on regulated persons. However, even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed new sections are necessary to implement legislation. The proposed rulemaking implements Insurance Code Chapter 1662, as added by HB 2090.

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

- 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 create a new regulation;
- will not expand, limit, or repeal an existing regulation;

- will increase 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 April 4, 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 April 4, 2022. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §§21.5501 - 21.5503 under Insurance Code §§1662.004, 1662.107, and §36.001.

Insurance Code §1662.004 provides that the Commissioner may adopt rules necessary to implement Chapter 1662.

Insurance Code §1662.107 provides that the files described by §1662.103 must be available in a form and manner prescribed by department rule.

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. Section 21.5501 implements Insurance Code §1662.101. Section 21.5502 implements Insurance Code §§1662.103 - 1662.107. Section 21.5503 implements Insurance Code §1662.107.

TEXT.

§21.5501. Applicability and Effective Date.

(a) Except as provided in subsections (b) and (c) of this section, this subchapter applies to issuers of health benefit plans as specified in Insurance Code §1662.003, concerning Applicability of Chapter, that provide major medical coverage for which federal reporting requirements under 26 C.F.R. Part 54, concerning Pension Excise Taxes; 29 C.F.R. Part 2590, concerning Rules and Regulations for Group Health Plans; 45 C.F.R. Part 147, concerning Health Insurance Reform Requirements for the Group and Individual

Health Insurance Markets; and 45 C.F.R. Part 158, concerning Issuer Use of Premium Revenue: Reporting and Rebate Requirements, do not apply, including:

(1) issuers providing short-term limited-duration insurance, as defined in Insurance Code Chapter 1509, concerning Short-Term Limited-Duration Insurance;

(2) issuers providing grandfathered health plan coverage, as defined in 45 C.F.R. §147.140, concerning Preservation of Right to Maintain Existing Coverage; and

(3) a regional or local health care program operated under Health and Safety Code §75.104, concerning Health Care Services.

(b) This subchapter does not apply to the following types of plans:

(1) a plan that is not considered creditable coverage as specified under Insurance Code §1205.004(b), concerning Creditable Coverage;

(2) the child health plan program operated under Health and Safety Code Chapter 62, concerning Child Health Plan for Certain Low-Income Children;

(3) the health benefits plan for children operated under Health and Safety Code Chapter 63, concerning Health Benefits Plan for Certain Children; and

(4) the state Medicaid program operated under Human Resources Code Chapter 32, concerning Medical Assistance Program, including the Medicaid managed care program operated under Government Code Chapter 533, concerning Medicaid Managed Care Program.

(c) Except as provided by subsections (d) and (e) of this section, with respect to an applicable health benefit plan, an issuer must begin publishing machine-readable files as required under this subchapter in the month in which the plan year or policy year begins.

(d) A health benefit plan issuer with fewer than 1,000 total enrollees in all health benefit plans subject to reporting as of December 31, 2021, must begin publishing machine-readable files as required under this subchapter no later than January 1, 2024.

(e) Except as provided by subsection (d) of this section, an issuer is required to begin publishing machine-readable files no sooner than 180 days after the effective date of this section and no later than the earliest date specified in paragraphs (1) and (2) of this subsection:

(1) the date that the federal Departments of Labor, Health and Human Services, and Treasury begin enforcing the federal Transparency in Coverage rules specific to the publication of machine-readable files for prescription drug pricing, in-network rates, and out-of-network allowed amounts and billed charges, if the date of enforcement occurs after the 180th day following the effective date of this section; or

(2) January 1, 2024.

§21.5502. Form and Method of Publishing Machine-Readable Files.

(a) Required machine-readable files. Issuers must publish the following machine-readable files consistent with Insurance Code Chapter 1662, Subchapter C, concerning Required Public Disclosures, and the rules under this subchapter:

(1) an in-network negotiated rates file, containing in-network provider negotiated rates for all items and services, consistent with Insurance Code §1662.103(a)(1), concerning Required Information, and §1662.104, concerning Network Rate Disclosures;

(2) an out-of-network allowed amounts file, containing billed and allowed amounts for out-of-network providers, consistent with Insurance Code §1662.103(a)(2) and §1662.105, concerning Out-of-Network Allowed Amounts; and

(3) an in-network prescription drugs file, containing in-network historical net prices and negotiated rates for prescription drugs, consistent with Insurance Code §1662.103(a)(3) and §1662.106, concerning Historical Net Price.

(b) Transport mechanism. An issuer must make all machine-readable files available via HTTPS.

(c) Content type. An issuer must use a nonproprietary and open format for publishing machine-readable files. Examples of acceptable formats include JSON, XML, and YAML. Examples of proprietary formats that are not acceptable include PDF, XLS, and XLSX.

(d) Public discoverability. An issuer must make machine-readable files available to the public without restrictions that would impede the re-use of that information. The issuer must provide the location of the URLs for the machine-readable files over HTTPS to ensure the integrity of the data.

(e) Indexing. To allow for search engine discoverability, an issuer may not use a mechanism, such as a robots.txt file or a meta tag on the page where the files are hosted, or other mechanism that gives instructions to web crawlers to not index the page.

(f) Special data types. Dates must be strings in ISO 8601 format (e.g., YYYY-MM-DD).

(g) Different flat files. Issuers must publish three machine-readable files using the following file type names:

(1) "in-network-rates" for the file containing in-network provider negotiated rates, consistent with Insurance Code §1662.103(a)(1) and §1662.104;

(2) "allowed-amounts" for the file containing billed and allowed amounts for out-of-network providers, consistent with Insurance Code §1662.103(a)(2) and §1662.105; and

(3) "prescription-drugs" for the file containing historical net prices and negotiated rates for prescription drugs, consistent with Insurance Code §1662.103(a)(3) and §1662.106.

(h) File-naming convention. An issuer must name each file using the naming convention and standards required under this subsection.

(1) The file naming convention includes the elements identified in subparagraphs (A) - (D) of this paragraph, each separated by an underscore, followed by a period and the file extension:

(A) the four-digit year, two-digit month, and two-digit day, each separated by dashes (e.g., "2022-12-01" would be used for a file published December 1, 2022);

(B) the issuer name, with any spaces replaced with dashes (e.g., "issuer-abc" would be used for an issuer called "issuer abc");

(C) the plan name, with any spaces replaced with dashes (e.g., "healthplan-100" would be used for a plan called "healthplan 100"); and

(D) the file type name (e.g., "in-network-rates").

(2) An issuer may include only alphanumeric characters in the file name. An issuer may not include special characters or punctuation other than the dashes, underscores, and periods specified in the naming convention. An issuer must either remove special characters completely or replace the special characters with a dash ("-").

(3) Examples of the file naming convention are provided in figure: 28 TAC §21.5502(h)(3).

Figure: 28 TAC §21.5502(h)(3)

Example 1

If the Centers for Medicare and Medicaid Services (CMS) published a JSON file for the Medicare plan on January 5, 2020, the required file names would be as follows:

- a. "2020-01-05_cms_medicare_in-network-rates.json";
- b. "2020-01-05_cms_medicare_allowed-amounts.json"; and
- c. "2020-01-05_cms_medicare_prescription-drugs.json."

Example 2

If an issuer named "issuer abc" published a JSON file for a plan named "healthcare 100", on May 1, 2021, the required file names would be as follows:

- a. "2021-05-01_issuer-abc_healthcare-100_in-network-rates.json";
- b. "2021-05-01_issuer-abc_healthcare-100_allowed-amounts.json"; and
- c. "2021-05-01_issuer-abc_healthcare-100_prescription-drugs.json."

(i) Safe harbor. An issuer that publishes machine-readable files in the form and method specified by the federal guidance published on the following website: github.com/CMSgov/price-transparency-guide, and its associated schemas, will be deemed compliant for the purposes of this subchapter.

§21.5503. Data Schemas.

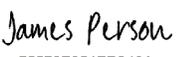
(a) In-network negotiated rate file schemas. For the "in-network-rates" file published under this subchapter, an issuer must include data elements consistent with the In-Network File Schema contained in Machine-Readable Files: Data Schemas (version 1.0), published on the department's website.

(b) Out-of-network allowed amount file schemas. For the "allowed-amounts" file published under this subchapter, an issuer must include data elements consistent with the Out-of-Network Allowed Amount File Schema contained in Machine-Readable Files: Data Schemas (version 1.0), published on the department's website.

(c) In-network prescription drugs file schemas. For the "prescription-drugs" file published under this subchapter, an issuer must include data elements consistent with the Rx File Schema contained in Machine-Readable Files: Data Schemas (version 1.0), published on the department's 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 17, 2022.

DocuSigned by:

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James Person, General Counsel
Texas Department of Insurance