

Subchapter G. Independent Review of Preauthorization Exemptions **28 TAC §12.601**

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §12.601, concerning review of preauthorization exemptions by independent review organizations (IROs). The amended section implements House Bill 3812, 89th Legislature, 2025. In a separate rulemaking published in this issue of the *Texas Register*, TDI proposes to amend related rules in 28 TAC §§19.1730 - 19.1733 to address other provisions related to preauthorization exemptions that are impacted by HB 3812.

EXPLANATION. Amending §12.601 is necessary to implement HB 3812, which amended Insurance Code §4201.656(a) to specify that a physician or provider has a right to an independent review of a health plan's determination to deny a preauthorization exemption.

Descriptions of the section's proposed amendments follow.

Section 12.601. Subsection (e) of §12.601 is amended to clarify that it applies with respect to a review of a rescission, and to update the reference to the title of §19.1733 consistent with proposed amendments to Chapter 19 included in this *Texas Register* issue.

New subsection (f) is added to address a review of a preauthorization exemption denial, consistent with proposed §19.1733(f), which permits an IRO, in some circumstances, to review a random sample. Section 12.601(f) specifies that if a denial of a preauthorization exemption is based on five or fewer adverse determinations that were not previously upheld by an IRO or external reviewer, the IRO must review all the adverse determinations to determine whether to uphold or overturn the denial. If a denial of a preauthorization exemption is based on more than five adverse determinations that were

not previously upheld by an IRO or external reviewer, the IRO may select a random sample of at least five and no more than 20 adverse determinations to review. This proposed requirement aligns with the random sampling approach provided for rescission reviews in Insurance Code §4201.655 and helps ensure that IROs will be able to complete reviews within the timeframe provided in Insurance Code §4201.656(c). If the IRO determines that one or more of the adverse determinations reviewed met the applicable medical necessity criteria and should have been approved, the IRO must recalculate an adjusted approval rate. New Figure: 28 TAC §12.601(f) is included to provide guidance on calculating the adjusted approval rate as required in new subsection (f). Paragraphs (1) - (3) specify the methodology for calculating the adjusted approval rate. Current subsections (f) - (g) are redesignated as appropriate to reflect addition of new subsection (f).

New subsection (i) is added to clarify the meaning of the term "external reviewer," with reference to federal rules. Under federal law, most appeals of adverse determinations use the federal external review process, which may not involve an IRO as defined by Chapter 12.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of Regulatory Initiatives in the 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 and local governments as a result of enforcing or administering the amendments, other than that imposed by the 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 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 amendments are in effect, Ms. Bowden expects that the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Insurance Code Chapter 4201, Subchapter N, and that IROs understand how to evaluate appeals of preauthorization exemption denials.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapter 4201 because the amendments do not impose requirements beyond those in the statute. Amended §12.601 requires IROs to review adverse determinations related to preauthorization exemptions, including exemption denials. The amendments give IROs flexibility to select a random sample for review if the denial is based on more than five adverse determinations. The amendments are necessary to conform to Insurance Code §4201.656(a) as amended by HB 3812. As a result, any costs an IRO may incur in updating procedures to address review of preauthorization exemption denials are not directly attributable to this rule proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. However, even if the proposal did impose a cost on regulated persons, no additional rule amendments are required under Government Code §2001.0045 because the proposed

amendments are necessary to implement legislation. The proposed rule implements Insurance Code §4201.656 as amended by HB 3812.

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 June 17, 2026. Consistent with Government Code §2001.024(a)(8), TDI requests public

comments on the proposal, including information related to the cost, benefit, or effect of the proposal and any applicable data, research, and analysis. 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.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2866. This proposal will be part of a rule hearing docket that will begin at 1:00 p.m., central time, on June 15, 2026. TDI will hold the public hearing remotely using online resources and in person at the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701 in Room 3.029. Visit www.tdi.texas.gov/alert/event/index.html for more information on the proposed rule, hearing, and comment submission.

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STATUTORY AUTHORITY. TDI proposes amendments to §12.601 under Insurance Code §§4201.003, 4202.002 and 36.001.

Insurance Code §4201.003 authorizes the commissioner to adopt rules to implement Insurance Code Chapter 4201.

Insurance Code §4202.002 authorizes the commissioner to adopt standards and rules for the operation of independent review organizations.

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. Amendments to §12.601 implement Insurance Code §4201.656(a) as amended by HB 3812.

TEXT.

§12.601. Preauthorization Exemptions.

(a) In this section, the following words and terms have the following meanings unless context clearly indicates otherwise.

(1) Adverse determination regarding a preauthorization exemption--Has the same meaning as defined in §19.1730 of this title (relating to Definitions).

(2) Issuer--Has the same meaning as defined in §19.1730 of this title.

(3) Physician--Has the same meaning as defined by Insurance Code §843.002, concerning Definitions.

(4) Preauthorization exemption--Has the same meaning as defined in §19.1730 of this title.

(5) Provider--Has the same meaning as defined in Insurance Code §843.002.

(b) An independent review of an adverse determination regarding a preauthorization exemption, the independent review organization (IRO) that performs the review, and the appropriate issuer are subject to Insurance Code Chapter 4201, Subchapter N, concerning Exemption from Preauthorization Requirements for Physicians and Providers Providing Certain Health Care Services, and the associated standards and requirements in this chapter, except as otherwise specified in this section.

(c) For purposes of this section, a physician or provider should be identified using the National Provider Identifier under which a physician or provider makes preauthorization requests.

(d) Notwithstanding §12.501 of this title (relating to Requests for Independent Review), an issuer must submit a request for independent review of an adverse

determination regarding a preauthorization exemption to the department on behalf of a physician or provider.

(e) For a review of a rescission of a preauthorization exemption, if [H] a second random sample is requested under Insurance Code §4201.656(d), concerning Independent Review of Exemption Determination, and available as provided in §19.1733(e) of this title (relating to Utilization [Retrospective] Reviews and Appeals of Preauthorization Exemption Denials and Rescissions), the IRO must identify, from the list of eligible claims provided by the issuer, a second random sample of at least five and no more than 20 claims. The IRO must review each claim that the issuer retrospectively reviewed and determined did not meet the applicable medical necessity criteria and, if applicable, each claim included in the second random sample identified by the IRO. Consistent with Insurance Code §4201.656(b), the IRO may request any medical records needed to evaluate the claims subject to review and must provide at least three business days for receipt of records. Based on the total number of claims in the initial random sample and, if applicable, the second random sample, the IRO must determine whether to affirm or overturn the issuer's determination that less than 90% [~~90 percent~~] of the claims met the applicable medical necessity criteria.

(f) For a review of a denial of a preauthorization exemption, if the denial notice provided by the issuer identifies five or fewer adverse determinations that have not previously been upheld by an IRO or external reviewer, the IRO must review all adverse determinations included on the denial notice. Consistent with §19.1733(f) of this title, if the denial notice identifies more than five adverse determinations that have not previously been upheld by an IRO or external reviewer, the IRO may select a random sample of at least five and no more than 20 adverse determinations to review. If the IRO determines that one or more of the adverse determinations reviewed met the medical necessity criteria and should have been approved, the IRO must calculate an adjusted approval rate

to determine whether the denial of preauthorization exemption is overturned. Figure: 28 TAC §12.601(f) contains illustrative guidance on how to calculate an adjusted approval rate consistent with this section.

Figure: 28 TAC §12.601(f).

Guidance on calculating the adjusted approval rate as required in §12.601(f)

Percent Overturned (OT%)—Percent of reviewed adverse determinations that the IRO determines should have been approved and that would have been overturned had the physician or provider appealed to an IRO (i.e., the percent of adverse determinations reviewed that the IRO determined to be medically necessary and appropriate).

Number of Adverse Determinations (#ADs)—Number of preauthorization requests included in the evaluation that were adversely determined.

Number Approved (#APs)—Number of preauthorization requests included in the evaluation that were approved.

Total Preauthorization Requests (Total #PRs)—Total number of preauthorization requests included in the evaluation.

Adjusted Approval Rate—
$$\frac{(OT\% \times \#ADs) + \#APs}{\text{Total \#PRs}}$$

(1) To calculate the adjusted number of approved preauthorization requests, multiply the percent of the adverse determinations reviewed that the IRO determines should have been approved by the number of preauthorization requests included in the evaluation that were adversely determined, and add that product to the number of preauthorization requests that were approved during the evaluation period.

(2) To calculate the adjusted approval rate, divide the adjusted number of approved preauthorization requests by the total number of preauthorization requests.

(3) If the adjusted approval rate is 90% or higher, the denial is overturned and the issuer must grant the preauthorization exemption.

(g) ~~[(f)]~~ Appeals for an adverse determination regarding a preauthorization exemption to an IRO follow the department's process for assigning IROs under §12.502 of this title (relating to Random Assignment), except that notification under §12.502(a) will only be made to the IRO, the issuer, and the physician or provider.

(h) ~~[(g)]~~ Section 12.206 of this title (relating to Notice of Determinations Made by Independent Review Organizations) does not apply to a review by an IRO under this section. An IRO must complete its review and provide timely notice to an issuer regarding its determination, consistent with the timeframe provided under Insurance Code §4201.656(c).

(i) For the purposes of this section, the term "external reviewer" refers to an entity that conducts external review under 45 CFR §147.136, concerning Internal Claims and Appeals and External Review Processes.

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

Issued in Austin, Texas, on May 1, 2026.

Signed by:
Jessica Barta
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Jessica Barta, General Counsel
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