

Subchapter X. Evaluation of Network Physicians and Providers

[~~28 TAC §21.3202~~]

28 TAC §21.3202

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §21.3202, concerning physician ranking requirements, and replace it with new §21.3202, concerning designated organizations for physician ranking, which designates organizations whose standards may be used by health benefit plan issuers for physician rankings. The proposed repeal and new section are necessary to implement Senate Bill 926, 89th Legislature, 2025.

EXPLANATION. The proposed repeal and replacement of §21.3202 implement Insurance Code §1460.003 and §1460.005. Chapter 1460 was added by House Bill 1888, 81st Legislature, 2009, to address the requirements for health benefit plan issuers when making certain comparisons of physicians. Under HB 1888, issuers could make only certain comparisons of physicians, using nationally recognized standards and guidelines adopted by the commissioner. SB 926 made substantive changes to Insurance Code Chapter 1460 by removing the list of nationally recognized organizations that establish guidelines and performance measures, and instead providing criteria that an organization and its standards must meet to be eligible to be designated by TDI rules.

Under SB 926, a health benefit plan issuer may rank physicians or classify physicians into tiers based on performance only if the standards used in the ranking are developed or prescribed by an organization designated by the commissioner. Insurance Code §1460.005 provides amended eligibility criteria that organizations must meet to be designated.

SB 926 also extends the commissioner's enforcement authority. Insurance Code §1460.007(c) states that the commissioner shall prohibit a health benefit plan issuer from

using a ranking or classification system for not less than 12 consecutive months if the commissioner determines that the health benefit plan issuer has engaged in a pattern of discrepancies, falsehoods, or violations described by §1460.003(a-1).

Additionally, SB 926 amended the due process protections that health benefit plan issuers are required to provide to affected physicians.

Since the passage of SB 926, TDI has been receiving nominations of organizations that the commissioner should designate to implement Insurance Code Chapter 1460. On November 20, 2025, TDI also issued a public request for such nominations. TDI has received nominations of the following entities:

- Any national medical specialty society, as defined in Insurance Code Chapter 1460;
- Blue Health Intelligence (BHI);
- CareMetro;
- Core Quality Measures Collaborative (CQMC);
- Denniston Data Inc. (DDI);
- Global Appropriateness Measures (GAM);
- IntegerHealth;
- Joint Commission;
- Motive Medical Intelligence;
- National Committee for Quality Assurance (NCQA);
- National Quality Forum (NQF);
- Partnership for Quality Measures (PQM);
- Patient Centered Episode System (PACES);
- Purchaser Business Group on Health (PBGH);
- United States Department of Health and Human Services (HHS), including the Agency for Healthcare Research and Quality (AHRQ), Centers for Disease Control and

Prevention (CDC), Centers for Medicare and Medicaid Services (CMS), Food and Drug Administration (FDA), and National Institutes of Health (NIH);

- U.S. Preventive Services Task Force (USPSTF);
- Commission on Accreditation of Rehabilitation Facilities (CARF®

International); and

- Utilization Review Accreditation Commission (URAC).

Proposed new §21.3202 includes the nominated organizations for commissioner designation under Insurance Code Chapter 1460. Two nominated organizations, CARF and URAC, are excluded from the list of proposed organizations because they indicated that they did not wish to be designated.

TDI sent a survey to each nominated organization (other than medical specialty societies, and federal agencies and task forces) to assess whether the organization and its standards meet the statutory criteria. TDI's determination regarding each entity will be based on survey responses, publicly available information, and comments received. For some of the listed organizations, eligibility has not been clearly established, and detailed comments are encouraged in support of, or opposition to, all of them. For example, comments are welcome on whether an organization is "unbiased" under Insurance Code §1460.005(c)(1)(B), whether an organization's standards were developed by "physicians currently in clinical practice," consistent with Insurance Code §1460.006, whether an organization's standards are "nationally recognized" under Insurance Code §1460.005(c)(2)(A)(i), and whether an organization qualifies even if its standards do not themselves reference physicians' ability to "report data, evidentiary, factual, or mathematical discrepancies, errors, omissions, or faulty assumptions" under Insurance Code §1460.005(c)(2)(B).

Note that if new entities are suggested for designation in comments on this proposal, it is likely that they will not be considered in this rulemaking due to the absence

of an opportunity for the public to comment on them. However, they may be considered in future rulemaking.

In separate proposals TDI will propose to amend 28 TAC Chapters 3 and 11 to make changes to implement portions of SB 926 that amend Insurance Code Chapters 1301 and 843.

A description of the new section follows.

Repeal of §21.3202. TDI proposes to repeal §21.3202.

New §21.3202. Designated Organizations for Physician Ranking. Proposed new §21.3202 specifically lists the designated organizations whose standards health benefit plan issuers may use when ranking or classifying physicians.

New §21.3202(a) lists the organizations designated by the commissioner under Insurance Code Chapter 1460. New §21.3202(b) provides that the commissioner may enter an order designating a qualified entity on an interim basis, which would be followed by a designation by rule within three years in order to continue. New §21.3202(c) specifies that a health benefit plan issuer retains responsibility for compliance with the requirements of Insurance Code Chapter 1460.

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 repeal and new section 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 increase 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 repeal and new section are in effect, Ms. Bowden expects that administering the proposed rule will have the public benefit of designating the organizations to develop or prescribe the standards required for health benefit plan issuers to rank or classify physicians. These amendments ensure that TDI's rules conform to Insurance Code Chapter 1460 and promote a transparent system of physician ranking that is based on standards developed or prescribed by designated organizations meeting the statutory criteria.

Ms. Bowden expects that while some designated organizations make standards for ranking or classifying physicians freely available, others may charge fees to access the standards. Multiple organizations are designated in the proposed rule, so any fees may vary. Nonetheless, the requirement to use designated organizations is statutory, so all associated costs are also attributable to statute and do not result from enforcement or administration of the proposed rule. Thus, the proposed repeal and new section will not increase the cost of compliance beyond what is already required by Insurance Code Chapter 1460. Issuers may choose to avoid cost by using standards that are available for free or choosing not to rank or classify physicians.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed repeal and new section will not have an adverse economic effect on small or micro businesses, or on rural communities. The rule does not apply to rural communities. Small or micro businesses are not required by statute or by this proposed rule to perform physician ranking. While costs may arise for businesses that choose to perform physician ranking and to use standards that require a fee, all

businesses, including small and microbusinesses, can choose to use standards from organizations that provide them at no cost. 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 may impose costs on regulated persons that choose to perform physician ranking and to use standards that require a fee. However, regulated persons may choose to instead use standards that are available at no cost. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §21.3202 are necessary to implement legislation. The proposed rule implements Insurance Code Chapter 1460, as amended by SB 926.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed repeal and new section 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 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.

The proposed rule will expand, limit, or repeal an existing regulation by removing and replacing the outdated rule applying Insurance Code Chapter 1460 requirements for health benefit plan issuers to rank or classify physicians.

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 8, 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. 2863. This proposal will be part of a rule hearing docket that will begin at 10:00 a.m., central time, on June 1, 2026. TDI will hold the public hearing both remotely using online resources and in person at the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin Texas 78701 in Room 2.034. Details of how to view and participate virtually in the public hearing will be made available on TDI's website at www.tdi.texas.gov/alert/event/index.html.

Subchapter X. Evaluation of Network Physicians and Providers
Repeal of 28 TAC §21.3202

STATUTORY AUTHORITY. TDI proposes the repeal of §21.3202 under Insurance Code §1460.005(a) and (b) and §36.001.

Insurance Code §1460.005(a) requires the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1460.

Insurance Code §1460.005(b) requires the commissioner to adopt rules as necessary to ensure that a health benefit plan issuer that uses a physician ranking system complies with the standards and guidelines described in Insurance Code §1460.005(c).

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. The repeal of §21.3202 implements Insurance Code Chapter 1460.

TEXT.

§21.3202. Physician Ranking Requirements.

Subchapter X. Evaluation of Network Physicians and Providers
28 TAC §21.3202

STATUTORY AUTHORITY. TDI proposes new §21.3202 under Insurance Code §§1460.003(a), 1460.005(a) and (b) and 36.001.

Insurance Code §1460.003(a) prohibits health benefit plan issuers from ranking or classifying physicians into tiers based on performance unless, among other things, the

standards used to rank or classify are developed or prescribed by an organization designated by the commissioner by rule.

Insurance Code §1460.005(a) requires the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1460.

Insurance Code §1460.005(b) requires the commissioner to adopt rules as necessary to ensure that a health benefit plan issuer that uses a physician ranking system complies with the standards and guidelines described in Insurance Code §1460.005(c).

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. New §21.3202 implements Insurance Code Chapter 1460.

TEXT.

§21.3202. Designated Organizations for Physician Ranking.

(a) For the purposes of Insurance Code Chapter 1460, concerning Standards Required Regarding Certain Physician Rankings by Health Benefit Plans, the commissioner designates the following organizations:

(1) any national medical specialty society, as defined in Insurance Code Chapter 1460;

(2) Blue Health Intelligence (BHI);

(3) CareMetro;

(4) Core Quality Measures Collaborative (CQMC);

(5) Denniston Data Inc. (DDI);

(6) Global Appropriateness Measures (GAM);

- (7) IntegerHealth;
- (8) Joint Commission;
- (9) Motive Medical Intelligence;
- (10) National Committee for Quality Assurance (NCQA);
- (11) National Quality Forum (NQF);
- (12) Patient Centered Episode System (PACES);
- (13) Partnership for Quality Measures Evaluation and Maintenance (PQM);
- (14) Purchaser Business Group on Health (PBGH);
- (15) United States Department of Health and Human Services (HHS),

including:

- (A) the Agency for Healthcare Research and Quality (AHRQ);
- (B) Centers for Disease Control and Prevention (CDC);
- (C) Centers for Medicare and Medicaid Services (CMS);
- (D) Food and Drug Administration (FDA), and;
- (E) National Institutes of Health; and;
- (16) United States Preventive Services Task Force (USPSTF).

(b) If an entity meets the requirements for designation under Insurance Code Chapter 1460, the commissioner may enter an order designating the entity on an interim basis as one whose standards may be used by health benefit plan issuers for the ranking or tiering of physicians consistent with Insurance Code §1460.003, concerning Physician Ranking Requirements. Interim designations will not be for a period longer than three years and will not be renewed or extended.

(c) A health benefit plan issuer retains ultimate responsibility for compliance with the requirements of Insurance Code Chapter 1460, including ensuring that any standard used to rank physicians or classify physicians into tiers based on performance meets the requirements of Insurance Code §§1460.003 - 1460.006.

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 April 27, 2026.

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