



September 28, 2023

Office of the Chief Clerk
Texas Department of Insurance
P.O. Box 12030, Austin, Texas 78711-2030

Submitted electronically to ChiefClerk@tdi.texas.gov

RE: Subchapter OO. Disclosures by Out-of-Network Providers 28 TAC §21.4902, Subchapter PP. Out-of-Network Claim Dispute Resolution Division 1. General Provisions 28 TAC §21.5002 and §21.5003, Division 5. Explanation of Benefits and Enrollee ID Card Requirements 28 TAC §21.5040, Division 7. Submission Requirements for Election by ERISA Plans 28 TAC §21.5060, Division 8. Emergency Medical Service Rate Submission and Payment Requirements 28 TAC §21.5070 and §21.5071

Dear Texas Department of Insurance:

On behalf of the Emergency Department Practice Management Association (EDPMA), I appreciate the opportunity to provide comments on the Texas Department of Insurance (TDI) proposed rule to amend sections of the Texas Administrative Code that govern trade practices for insurance companies and their enrollees regulated by TDI who are subject to the Texas Independent Dispute Resolution (IDR) process.

EDPMA is the only professional physician trade association focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups of all ownership models and sizes, many of whom serve rural communities, as well as billing, coding, and other professional support organizations that assist healthcare providers in our nation's emergency departments. Together, EDPMA's members see or support 60% of all annual emergency department (ED) visits in the country and provide direct patient care to 40% of all ED visits.

Division 5. Explanation of Benefits and Enrollee ID Card Requirements 28 TAC §21.5040

EDPMA urges TDI to consider including information related to which health plans are regulated by Texas and subject to the TDI IDR process somewhere on the TDI website.

“Amendments to §21.5040 also require health benefit plans offered by nonprofit agricultural organizations and ERISA plans to display “TXIDR” on the ID card issued to enrollees.” We have experienced that the enrollee ID card is not sufficient to process claims in a timely manner. Our

organization has experienced multiple cases where the ID card failed to correctly identify if the enrollee's coverage was guided by TDI or ERISA. Adding an ERISA opt-in to the process is only going to increase this burden on patients and providers, thus giving health plans the opportunity to exploit the IDR process.

Other states have created webpages on official websites where patients and providers can visit to find out which health plans are regulated by their state insurance department.¹ Since this proposed rule permits a plan sponsor of a self-insured or self-funded plan established by an employer under ERISA to opt-in to the Texas IDR process by filling out a form and submitting that information to TDI - we believe TDI can turn this information into a sharable online document for the public to review. The proposed rule specifically states the health plans who opt-in to the TDI IDR process must do so for the entire plan year and re-apply at the expiration of that plan year. This should give TDI ample time to create the aforementioned document and upload it to the TDI website for public consumption.

Lastly, we understand that the enrollee's explanation of benefits (EOB) has been amended in this proposed rule to, *"require health benefit plans offered by nonprofit agricultural organizations and ERISA plans to include additional information in the explanation of benefits provided to physicians or providers. Proposed additional information includes a disclaimer that the plan opted in to the Texas IDR process for the relevant plan year and that claims after the effective date must proceed through the Texas IDR process."* We appreciate TDI's inclusion of this amendment, but still believe the publication of this information on the TDI website would be more reliable and failsafe for patients and providers looking to identify which health plans are subject to Texas IDR in a timelier manner.

EDPMA appreciates the opportunity to provide input on this proposed rule. If you have any questions or we can provide any additional information, please do not hesitate to contact EDPMA Executive Director, Cathey Wise at cathey.wise@edpma.org.

Sincerely,



Andrea Brault MD, MMM, FACEP
Chair
Emergency Department Practice Management Association

¹ <https://di.nv.gov/sdc/EmployerList.pdf>