

SUBCHAPTER C. GENERAL STANDARDS OF INDEPENDENT REVIEW
28 TAC §12.206

INTRODUCTION. The Texas Department of Insurance (TDI) adopts amendments to 28 TAC §12.206, relating to notices of determinations made by independent review organizations (IROs). The amendments are adopted with one nonsubstantive change to the proposed text published in the January 25, 2019, issue of the *Texas Register* (44 TexReg 405). The department revised the text of §12.206(b) as proposed to add the words "of this section" following the reference to subsection (c) to clarify that the provision is referencing subsection (c) in §12.206.

REASONED JUSTIFICATION. The amendments are necessary to align the rules with statute and implement House Bill 1621, 84th Legislature, Regular Session (2015) and SB 680, 85th Legislature, Regular Session (2017).

The department amends §12.206(b) to include the provision that the time for IROs to give notice of their determination of appeals from adverse determinations of utilization review agents (URAs) provided in that subsection does not apply to situations described in §12.206(c). The change is needed to clarify the rule and remove any potential conflict between the existing sections.

The department amends §12.206(c) to require that IROs notify enrollees of the results of appeals from adverse determinations for prescription drugs or intravenous infusions for which a patient is receiving benefits under the health insurance policy, and reviews of step therapy protocol exception requests, within three days after the IRO receives the information necessary to make the determination. The statutory changes in HB 1621 and SB 680 necessitate amending 28 TAC §12.206 to align the rule with the

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statutes. Insurance Code §4202.002(b)(5) requires that the Commissioner adopt standards ensuring the timely notice to an enrollee of the results of an independent review. The Commissioner implemented the statute's notice standards by adopting §12.206 on November 26, 1997.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §12.206 under Insurance Code §§1369.057, 4202.002, and 36.001.

Insurance Code §1369.057 provides that the Commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter B.

Insurance Code §4202.002(b)(5) provides that the Commissioner adopt standards to ensure the timely notice to an enrollee of the results of an independent review.

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.

TEXT.

§12.206. Notice of Determinations Made by Independent Review Organizations.

(a) An IRO must notify the patient or patient's representative, the patient's provider of record, the utilization review agent, the payor, and the department of a determination made in an independent review.

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(b) For a situation other than a situation described in subsection (c) of this section, the notification required by this section must be mailed or otherwise transmitted no later than the earlier of:

(1) The 15th day after the date the IRO receives the information necessary to make a determination; or

(2) the 20th day after the date the IRO receives the request for the independent review.

(c) In the case of a life-threatening condition, the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under a health insurance policy, or a review of a step therapy protocol exception request under Insurance Code §1369.0546, the notification must be by telephone, and followed by facsimile, email, or other method of transmission no later than the earlier of:

(1) the third day after the date the IRO receives the information necessary to make a determination; or with respect to:

(2) a review of a health care service provided to a person eligible for workers' compensation medical benefits, the eighth day after the date the IRO receives the request that the determination be made; or

(3) a review of health care service other than a service described by paragraph (2) of this subsection, the third day after the date the IRO receives the request that the determination be made.

(d) Notification of determination by the IRO is required to include at a minimum:

(1) a listing of all recipients of the notification of determination as described in subsection (a) of this section, identifying for each:

(A) the name; and

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(B) as applicable to the manner of transmission used to issue the notification of determination to the recipient:

- (i) mailing address;
- (ii) facsimile number; or
- (iii) email address;

(2) the date of the original notice of the decision, and if amended for any reason, the date of the amended notification of decision;

(3) the independent review case number assigned by the department;

(4) the name of the patient;

(5) a statement about whether the type of coverage is health insurance, workers' compensation, or workers' compensation health care network;

(6) a statement about whether the context of the review is preauthorization, concurrent utilization review, or retrospective utilization review of health care services;

(7) the name and certificate of registration number of the IRO;

(8) a description of the services in dispute;

(9) a complete list of the information provided to the IRO for review, including dates of service and document dates, where applicable;

(10) a description of the qualifications of the reviewing physician or provider;

(11) a statement that the review was performed without bias for or against any party to the dispute and that the reviewing physician or provider has certified that no known conflicts of interest exist between the reviewer and:

- (A) the patient;
- (B) the patient's employer, if applicable;
- (C) the insurer;

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(D) the utilization review agent;

(E) any of the treating physicians or providers; or

(F) any of the physicians or providers who reviewed the case for determination before its referral to the IRO, and that the review was performed without bias for or against any party to the dispute;

(12) a statement that the independent review was performed by a health care provider licensed to practice in Texas, if required by applicable law and of the appropriate professional specialty;

(13) a statement that there is no known conflict of interest between the reviewer, the IRO, and any officer or employee of the IRO with:

(A) the patient;

(B) the provider requesting independent review;

(C) the provider of record;

(D) the utilization review agent;

(E) the payor; and

(F) the certified workers' compensation health care network, if applicable;

(14) a summary of the patient's clinical history;

(15) the review outcome, clearly stating whether medical necessity or appropriateness exists for each of the health care services in dispute and whether the health care services in dispute are experimental or investigational, as applicable;

(16) a determination of the prevailing party, if applicable;

(17) the analysis and explanation of the decision, including the clinical bases, findings, and conclusions used to support the decision;

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(18) a description and the source of the review criteria used to make the determination;

(19) a certification by the IRO of the date the decision was sent to all recipients of the notification of determination as required in subsection (a) of this section by U.S. Postal Service or otherwise transmitted in the manner indicated on the form;

(20) for independent reviews of health care services provided under Labor Code Title 5 or Insurance Code Chapter 1305, any information required by §133.308 of this title; and

(21) notice of applicable appeal rights under Insurance Code Chapter 1305 and Labor Code Title 5, and instructions concerning requesting such appeal.

(e) Example templates for the notification of determination regarding health and workers' compensation cases are on the department's website at tdi.texas.gov/forms.

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

Issued at Austin, Texas, on July 3, 2019.

/s/ James Person
James Person
Interim General Counsel
Texas Department of Insurance

The Commissioner adopts amendments to 28 TAC §12.206.

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By: */s/ Kent C. Sullivan* _____

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Commissioner of Insurance

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