



Preauthorization exemption process

September 29, 2022

TDI | Agenda

- Overview of preauthorization exemptions under HB 3459.
 - Applicability, definitions.
 - Eligibility for an exemption.
 - Initial grant or denial of exemption.
 - Continued eligibility or rescission of an exemption.
 - Communication methods.
 - Independent review of rescissions.
- Questions

TDI | Enacted by HB 3459

- [House Bill 3459](#) from 2021 (87th legislative session) added Insurance Code Chapter 4201, [Subchapter N](#):
- Exemption from preauthorization requirements for physicians and providers providing certain health care services
- Applies to TDI-regulated health plans offered by HMOs, PPOs, and EPOs
- Doesn't apply to Medicaid or CHIP.
- Requires issuers to exempt a provider that has a 90% approval rate from a preauthorization requirement for that service.
- Providers qualify for exemptions without taking any action.

TDI | Definitions

For more, see [Title 28 of the Texas Administrative Code \(TAC\) 19.1730](#)

- “Health care services,” “physician,” and “provider” are defined in [Texas Insurance Code \(TIC\) 843.002](#)(13), (22), and (24).
- Those definitions are broad and include prescription drugs.
- “Particular health care services” that can be exempt are based on services that require preauthorization. They are listed on a health plan’s website as required under [TAC 19.1718\(j\)](#), which implements [SB 1742](#) from 2019 (86th legislative session).
- A “preauthorization exemption” is for care rendered or ordered by a “treating physician or provider.”
- An “adverse determination regarding a preauthorization exemption” occurs when one or more claims retrospectively reviewed did not meet the issuer’s screening criteria and leads to a rescission of the preauthorization exemption.

TDI | Exemptions eligibility

- An exemption for a health care service is based on the physician's or provider's approval rate.
- The approval rate is based on the outcomes of all "eligible preauthorization requests" for the service that:
 - Are submitted and finalized during the most recent 6-month evaluation period (not pending appeal).
 - Result in the issuer either approving or giving an adverse determination for the service.
- Modified requests are counted based on any updated service requests.
- Outcomes for each service are counted individually.
- Refer to: [TAC 19.1730\(3\)](#).

TDI | Treating providers

Under [TAC 19.1731](#):

- Exemptions are granted using the National Provider Identifier (NPI). This is also how preauthorization requests are made.
- Exemptions apply to care ordered, referred, or provided by the treating provider.
- Nurses and physician assistants practicing under a physician can rely on an exemption.
- Providers who give care ordered or referred by a provider with an exemption must include the ordering provider's name and NPI.

TDI | Initial evaluation

- The initial “evaluation period” is January 1 - June 30, 2022. (TAC [19.1730\(5\)](#))
- Notice is due within five days of completing an evaluation.
 - **Deadline for the initial evaluation period:** October 1, 2022
 - **Deadline for other evaluation periods:** Two months after the evaluation period.
- The evaluation to grant an exemption must be based on at least five eligible preauthorization requests. Otherwise, no notice is required. Refer to [TAC 19.1731\(b\)](#) and [TAC 19.1732\(c\)](#).
- Exemptions must be in place for least six months before they can be rescinded. Refer to [TAC 9.1732\(a\)](#).

TDI | Example: Initial evaluation is denied

Initial evaluation:
January 1, 2022 –
June 30, 2022

Initial notice of
denial issued by:
October 1, 2022

Next evaluation
period:
July 1, 2022 –
December 31, 2022

Notice issued by:
March 1, 2023

TDI | Denial notice requirements

- A denial notice must include:
 - Data for the relevant evaluation period.
 - Information about the failure to meet the criteria for an exemption.
 - Information about appealing the denial with the issuer.
 - Information about filing a complaint with TDI. For example, as provided in [Figure: TAC 1.601\(a\)\(2\)\(B\)](#).
- Refer to: [TIC 4201.655\(c\)\(2\)](#) and [TAC 19.1732\(b\)](#).

TDI | Example: Initial evaluation is granted

Initial evaluation:
January 1, 2022 –
June 30, 2022

Initial notice of
exemption issued by:
October 1, 2022

Subject to rescission in:
June 2023, January 2024,
or future

TDI | Exemption notice requirements

- A notice granting an exemption must include:
 - A plain language explanation of the effect of the exemption.
 - Applicable health care services and health benefit plans.
 - Duration of the exemption.
 - Claim coding guidance, consistent with [TAC 19.1731\(e\)](#).
- Refer to [TIC 4201.659\(d\)](#) and [TAC 19.1732\(a\)](#)
- Issuers must provide notice under [TIC 4201.659\(e\)](#) after getting a preauthorization request for a health care service that is exempt.

TDI | Continued eligibility

- Issuers may continue exemptions without another evaluation. ([TIC 4201.653\(c\)](#))
- While an exemption is in effect, an issuer:
 - Can't deny payment based on medical necessity, except for material misrepresentation of failure to perform the service.
 - May conduct retrospective reviews only to determine continued eligibility for an exemption (or investigate a basis for denial).
 - Refer to [TIC 4201.659](#).
- An exemption must last at least six months before it may be rescinded.

TDI | Retrospective reviews

As provided in [28 TAC §19.1733](#):

- Issuers may randomly select up to 20 claims to retrospectively review to evaluate continued eligibility for an exemption.
- Medical record requests must be made during or within 90 days of the end of an evaluation period.
- When requesting medical records within a retrospective review, issuers must give 30 days for receipt.
- Physicians and providers must keep medical records. If records aren't provided, the issuer may decide that the claim wouldn't have met the screening criteria.

TDI | Rescissions

- Issuers may rescind an exemption only after they:
 - Select a random sample of 5-20 claims to review.
 - Determine that less than 90% met the criteria (based on a review by a Texas-licensed physician of the same or similar specialty).
 - Provide a 30-day notice in January or June.
 - Provide an opportunity for an independent review.
- Refer to: [TIC 4201.655\(a\) and \(b\)](#).
- Issuers may choose the applicable six-month evaluation period for a notification of rescission.
- Issuers must give a rescission notice within two months of the evaluation period.
([TAC 19.1730\(5\)\(C\)](#))

TDI | Example: Exemption is rescinded

Rescission
evaluation:

October 1, 2022 -
March 31, 2023
(or later)

Rescission notice
issued:

June 1 - 30, 2023

Next evaluation
period:

April 1, 2023 -
September 30, 2023

Notice issued by:

December 1, 2023

TDI | Rescission notice requirements

A notice rescinding an exemption must include:

- The service for which exemption is being rescinded.
- Date of notice and effective date of the rescission.
- A plain language explanation of how the physician or provider can appeal and request an independent review.
- An identification of the:
 - Number of payable claims that were eligible for evaluation.
 - Number of claims in the random sample.
 - The result of each retrospective review, including information for claims that didn't meet the issuer's screening criteria.

TDI | Rescission notice requirements, cont'd

A notice rescinding an exemption must include:

- Space for the physician or provider to request an independent review, including contact information and the date the appeal is requested.
- Space to request another random sample, if available. (For example, if at least five more claims were eligible for evaluation, in addition to the original sample).
- Instructions about returning the form before the rescission is effective.

Refer to: [TIC 4201.655\(a\)\(3\)](#) and [TAC 19.1732\(d\)](#).

Issuers can use [LHL011](#) to provide rescission notices and independent review organization (IRO) request forms.



LHL011 | 0222

Notice of Rescission of Preauthorization Exemption and Right to Request an Independent Review

Important information and instructions

Date of notice _____

The preauthorization exemption for _____ will be rescinded effective _____.
Health care service Date

- This form is being provided to you because we have determined that you no longer qualify for a preauthorization exemption. A preauthorization exemption may be rescinded if less than 90 percent of claims meet the issuer's medical necessity screening criteria.
- This notice includes a listing of claims that were randomly selected to be retrospectively reviewed for the purposes of evaluating continued eligibility for preauthorization exemption, the determination of whether each claim met the issuer's screening criteria, and an explanation for each claim that did not meet the issuer's screening criteria.
- You can now request that your preauthorization exemption be reviewed, at no cost to you, by a health care provider who is totally independent of the issuer. This is called an independent review by an IRO.
- To request an independent review of your preauthorization exemption, you must return this completed form to the issuer at the address listed below before the rescission effective date listed on this notice. Make a copy of this form for your records and remember do not return this form to the Texas Department of Insurance (TDI).

Issuer information

Name of issuer _____

Address of issuer _____

City _____ State _____ ZIP _____

Phone _____ FAX _____

Email _____

The issuer will forward your request for an independent review to TDI. Once TDI receives the request from the issuer, TDI will assign your case to an IRO. You will receive a letter from TDI identifying the IRO to whom your case has been assigned. The IRO must make a determination within 30 days

Sample Information Used to Make the Determination to Rescind the Exemption

Total number of claims eligible to be evaluated: _____ Number of claims in random sample: _____

Claims randomly sampled and retrospectively reviewed to evaluate preauthorization exemption:

Claim	Did the claim meet the issuer's screening criteria?	If no, explain (in chart or attachments): <ul style="list-style-type: none"> - Principal reason claim did not meet screening criteria - Clinical basis for determination - Description of sources for screening criteria - Professional specialty of reviewer
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Request for a Review by an IRO

Name of physician or provider _____

Federal tax identification number _____

Address _____

City _____ State _____ ZIP _____

Phone _____ FAX _____

Email _____

Please indicate if you would like an IRO to review a separate random sample of claims, in addition to the issuer's random sample of claims. A separate random sample is available only if, based on the total number of claims eligible to be evaluated, there are at least five additional claims that were not included in the issuer's random sample.

- Review issuer's random sample
- Review the issuer's random sample and a separate random sample of claims, if available

Signature

Physician or Provider _____

Date _____

Date Received by Issuer _____

Questions

For information about the independent review process, please call TDI at 866-554-4926, Option 2 or email MCQA@TDI.Texas.gov.

Under [TAC 19.1732\(e\)](#), issuers must:

- Allow physicians and providers to designate an email or mailing address for preauthorization exemptions, denials, and rescissions.
- Allow physicians and providers to submit appeal requests by mail, email, or other electronic method.
- Explain how to update preferred contact information.
- Include information on its website under [TAC 19.1718\(j\)](#) and all communications under [TAC 19.1732](#).

TDI | Appeal of rescission

- Physicians and providers can appeal an “adverse determination regarding a preauthorization exemption” to an independent review organization (IRO).
- Physician and providers can request an independent review by submitting the rescission notice form before the rescission effective date. ([TAC 19.1733\(c\)](#))
- If a rescission is based on failure to provide medical records, the records must be submitted with the request for independent review. ([TAC 19.1733\(d\)](#))

TDI | Additional random sample

- If at least five more claims were eligible for review but weren't in the original random sample, the physician or provider may request an independent review for another random sample.
- The issuer must give a list of all the payable claims that were eligible to be evaluated. This allows the IRO to identify another random sample. IROs can ask providers for medical records.
- The IRO will review all claims in the additional random sample and all adverse determinations regarding a preauthorization exemption from the original random sample. The calculation of the approval rate is based on the combined samples.
- Refer to: [TAC 19.1733\(d\)](#) and [TAC 12.601\(e\)](#).

TDI | Independent review process

- Physician or provider sends IRO requests to issuer (this starts the 30-day clock).
- Issuer submits form to TDI within one business day. ([TAC 19.1733\(d\)](#) and [TAC 19.1717\(c\)](#))
- TDI randomly assigns an IRO within one business day.
- If another random sample is requested, the IRO can ask for medical records to be sent to them within three business days. ([TAC 12.601\(e\)](#))
- The IRO must complete its review within 30 days of the request. ([TAC 12.601\(g\)](#))
- The issuer must communicate the IRO's determination within five days.

TDI | Request for review by an IRO

- Issuers will submit IRO requests to TDI for exemptions.
- They should use [TDI's website](#) and the [Online IRO Request System](#).
- TDI will update its website to include preauthorization exemptions as a new type of IRO review.

TDI | Example: Rescission is appealed to an IRO

Rescission notice

Issued:
June 1, 2023

Effective:
July 1, 2023

Provider may
request appeal by
June 30.

Date requested
starts 30-day IRO
clock.

Issuer sends IRO
request to TDI
(one business day).

TDI assigns to IRO
(one business day).

IRO must complete
review in 30 days.

Issuer must send
decision to provider
in five days.

TDI | Review processes compared

- An “adverse determination regarding a preauthorization exemption” is similar to but different from an “adverse determination.”
- The determination is made by a Texas-licensed physician using the same screening criteria. It won’t result in a claim denial, but it could lead to a rescission.
- A retrospective review under [TIC 4201.659\(b\)\(1\)](#) isn’t subject to [TIC 4201.305](#).
- IRO requests and random assignments follow the same process as other reviews under [TAC 12.502](#).
- IROs notify issuers of determinations. [TAC 12.206](#) doesn’t apply.

TDI | Questions?

- Visit: tdi.texas.gov/health/hb3459.html
- Contact: LHLMgmt@tdi.texas.gov