

SUBCHAPTER X. Preferred Provider Plans

28 TAC §3.3703

1. INTRODUCTION. The Texas Department of Insurance proposes an amendment to §3.3703 concerning insurer contracting arrangements with preferred providers. This amendment is necessary to implement Senate Bill (SB) 50 enacted during the 79th Regular Legislative Session. Consistent with SB 50, the amendment to §3.3703 requires that upon request from a preferred provider, an insurer shall include a provision in the provider contract providing that the insurer or the insurer's clearinghouse may not deny or refuse to process an electronic clean claim because the claim is submitted in a batch of claims that contains claims that are deficient. The proposed amendment includes the contracting requirement provided by SB 50 and adds further language regarding the meaning of a batch submission. The proposed language clarifies that the reference to a batch submission is a reference to existing federal standardized transactions and provides that a batch submission is a group of electronic claims which are submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. Although the department has, elsewhere in this edition of the Texas Register, proposed language regarding the meaning of batch submissions, insurers must avoid reading the language of SB 50 and the proposed language too narrowly. The language of the statute and the proposed amendment also apply to clean claims that are submitted "together with" claims that are deficient. This language is broader than the term "batch submission" and includes

groups of claims that may or may not be properly classified as a batch submission for federal standardized transactions. Therefore, insurers should not inappropriately focus on whether claims that are submitted together are in a batch submission that meets the federal regulatory definition.

The department will consider the adoption of the proposed amendment in a public hearing under Docket No. 2615 scheduled for September 7, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

2. FISCAL NOTE. Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be the implementation of SB 50, which gives preferred providers the ability to request that an insurer include a provision in the provider contract indicating that the insurer will not deny or refuse to process an otherwise clean claim submitted in a batch of claims that may contain deficient claims. This will give preferred providers increased notice of the obligations that an insurer has to process

clean claims that are submitted in accordance with the process required by the insurer. Any cost to persons required to comply with this section for each year of the first five years the proposed section will be in effect is the result of enactment of SB 50 and not the result of the adoption, enforcement, or administration of this section. Because any potential costs are mandated by the statute and insurers should be able to include this language in provider contracts at the request of a preferred provider regardless of the size of the insurer, it would be neither legal nor feasible to waive or modify the requirements for insurers that are small or micro businesses.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 6, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

5. STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§1301.0641 and 36.001. Section 1301.0641 provides that if requested by a preferred provider an insurer shall include a provision in the preferred provider's contract providing that the insurer or the insurer's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. Section 36.001 provides that the

Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal:

Rule

§3.3703

Statute

Insurance Code §1301.0641

7. TEXT.

§3.3703. Contracting Requirements.

(a) An insurer marketing a preferred provider benefit plan must contract with physicians and health care providers to assure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the plan in a manner that assures both availability and accessibility of adequate personnel, specialty care, and facilities. Each contract must meet the following requirements:

(1) - (21) (No change.)

(22) Upon request by a preferred provider, an insurer shall include a provision in the preferred provider's contract providing that the insurer and the insurer's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that

is deficient. As used in this section, the term batch submission is a group of electronic claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. This paragraph applies to a contract entered into or renewed on or after January 1, 2006.

(b) - (c) (No change.)

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on _____, 2005.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance