

**SUBCHAPTER J. Physician and Provider Contracts and Arrangements**  
**28 TAC §11.901**

**INTRODUCTION.** The Texas Department of Insurance proposes an amendment to 28 Texas Administrative Code §11.901(d), concerning required and prohibited provisions.

**EXPLANATION.** The proposed amendment to §11.901(d) is necessary to clarify that a health maintenance organization is not required to exceed the requirements of Insurance Code §843.306 and §843.307. Section 11.901(d) states that physician and provider contracts, subcontracts, and arrangements must include provisions regarding written notification of termination to a physician or provider in compliance with Insurance Code §843.306 and §843.307. The additional provisions in the paragraphs following that requirement are unnecessary to implement the requirements of the statutes and have been marked for deletion.

The proposal does not require a health maintenance organization to amend or change its current contracts. However, they may do so to the extent that their contracts remain in compliance with the Insurance Code.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Debra Diaz-Lara, Director of the Managed Care Quality Assurance Office, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Diaz-Lara also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit expected as

a result of enforcing the section will be ensuring that department rules are consistent with Insurance Code §843.306 and §843.307.

Ms. Diaz-Lara has determined that the proposed amendment will not increase the cost of compliance with Insurance Code §843.306 and §843.307 because it does not impose requirements beyond those in the statute. Costs of complying with statute are not a result of the adoption or enforcement of this proposal. As amended, §11.901(d) will only direct health maintenance organizations to the statutory requirements. The proposed amendment will not require a health maintenance organization to change its current contracts or procedures. Costs incurred as a result of a change to a health maintenance organization's contracts would be the result of a business decision and not a requirement of these rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The department has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities, because the proposed amendment does not impose a cost on regulated persons. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** The department has determined that the proposed amendment does not impose a cost on regulated persons. In addition, no additional rule amendment or repeals are required under Government Code §2001.0045 because the proposed amendment is necessary to implement legislation.

**GOVERNMENT GROWTH IMPACT STATEMENT.** During the first five years that the proposed rule will be in effect, the proposed rule or its implementation:

- 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 department;
- will not require an increase or decrease in fees paid to the department;
- will not create a new regulation;
- will not expand, limit, or repeal existing regulations;
- will not increase nor decrease the number of individuals subject to the rule's applicability; and
- will not positively nor adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** The department 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, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** The department will consider any written comments on the proposal received by the department no later than 5:00 p.m., Central time, on November 12, 2018. Send your comments to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov); or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing, submit a written request before the end of the comment period to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov) or to the Office of the Chief

Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., Central time, on November 12, 2018. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** The amended section is proposed under Insurance Code §843.151 and §36.001.

Insurance Code §843.151 provides that the Commissioner may adopt reasonable rules as necessary and proper to implement Chapter 843.

Insurance Code §36.001 provides that the Commissioner 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 Texas.

**CROSS REFERENCE TO STATUTE.** The amendment in this proposal to §11.901(d) affects Insurance Code §843.306 and §843.307.

**TEXT.**

**§11.901. Required and Prohibited Provisions.**

(a) – (c) (No change.)

(d) Physician and provider contracts, subcontracts, and arrangements must include provisions regarding written notification of termination to a physician or provider in compliance with Insurance Code §843.306 (concerning Termination of Participation; Advisory Review Panel) and §843.307 (concerning Expedited Review Process on Termination or Deselection). ~~[including provisions providing that:]~~

~~[(1) the HMO must provide notice of termination by the HMO to the physician or provider at least 90 days before the effective date of the termination;]~~

~~[(2) not later than 30 days following receipt of the written notification of termination, a physician or provider may request a review by the HMO's advisory review panel except in a case involving:]~~

~~[(A) imminent harm to patient health;]~~

~~[(B) an action by a state medical or dental board, another medical or dental licensing board, or another licensing board or government agency that effectively impairs the physician's or provider's ability to practice medicine, dentistry, or another profession; or]~~

~~[(C) fraud or malfeasance; and]~~

~~[(3) within 60 days after receipt of the physician or provider's request for review, the advisory review panel must make its formal recommendation and the HMO must communicate its decision to the physician or provider.]~~

(e) – (f) (No change.)

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

Issued at Austin, Texas, on October 1, 2018.

/s/ Norma Garcia  
Norma Garcia  
General Counsel  
Texas Department of Insurance