



VISION: To improve the health of all Texans.

MISSION: TMA supports Texas physicians by providing distinctive solutions to the challenges they encounter in the care of patients.

TMA Division of Medical Economics

General Information Regarding Aetna Network Participation Termination (terminating network status effective 7/1/2012)

March 30, 2012

Background

Recently, Aetna began mailing letters to certain Texas physicians notifying them of the termination of their network participation as of July 1, 2012. The Aetna deselection process referenced in those letters is part of a national Aetna initiative. Aetna represented to Texas Medical Association (TMA) that it sent notification letters one-year ago informing affected physicians of the company's assessment of the physicians' billing and coding practices. Aetna states their data shows that affected physicians' billing and coding practices resulted in those physicians being more costly than their peers. This concern is reflected and reiterated in Aetna's termination notice letters.

Knowing Your Rights and Responsibilities

In response to multiple inquiries from affected physicians, TMA provides the following general information regarding the physicians' basic rights and responsibilities in network participation terminations.

Documentation

To safeguard and substantiate the physician's rights, physicians should consider retention of all correspondence between the practice and the insurer related to the proposed termination. In those circumstances where a physician's right is contingent upon his or her request, physicians may want to consider making all such requests in writing.

Basic Statutory and Regulatory Provisions

- *Right to an Economic Profile Upon Request.* For preferred provider benefit plans (commonly known as PPOs), Texas Insurance Code §[1301.058](#), provides that "An insurer that conducts, uses, or relies on economic profiling . . .to terminate the participation of . . . [physicians]...shall make available. . .on request the economic profile of that physician...including the written criteria by which the physician . . .is to be measured."
 - Note that the physician should request the economic profile in writing to substantiate that he or she has exercised this right.

- A physician who requests his or her economic profile should be mindful that the profile must be adjusted to recognize the characteristics of the physician's practice that may account for variations from expected costs.
- A physician has a right to a copy of his or her economic profile from a HMO (if the HMO uses such profiling) under Texas Insurance Code [§843.313](#).
- *Right to a Review Upon a Timely Written Request.* The physician's right to a review of the proposed termination and a copy of the advisory panel recommendation is granted by Texas Insurance Code Sections [843.306](#) (HMO); and [1301.057](#) (PPO) and regulated by 28 Texas Administrative Code Sections [3.3706](#) (PPO) and [11.901](#) (HMO).
 - For PPOs:
 - A physician must make a written request for a review within 10 **business** days of receipt of the notice of termination **and** within 20 **business** days of receipt of the notice of termination, the physician must supply any relevant information he or she desires the advisory review panel to consider.
 - To obtain a copy of the advisory panel's recommendation the physician must request a copy.
 - A physician, upon request, may receive a written explanation of the insurers' determination, if that determination is contrary to the advisory panel's recommendation.
 - For HMOs:
 - A physician must make a request for a review not later than 30 **calendar** days following receipt of the notice of termination.
 - Upon request, HMOs are required to provide a copy of the advisory panel's recommendation and the HMO's determination.
 - This notice of termination may affect both the PPO and HMO products.
 - In all cases, the advisory panel must have one member who is of the same or similar specialty as the appealing physician, if available.
 - The insurer or HMO is **not** bound by the advisory panel's recommendation.
- *Continued Treatment.* Sections [843.362](#) (HMO) and [1301.153](#) (PPO) of the Insurance Code state that a treating physician shall request that a patient of special circumstances be permitted to continue treatment under the physician's care. A physician must agree not to seek payment from the patient of any amount for which the patient would not be responsible if the physician continued to be in the HMO or PPO network.
 - Special circumstances are conditions "which a treating physician or provider reasonably believes that discontinuing care by that physician or provider could cause harm to an enrollee who is a patient. Examples of an enrollee who has a special circumstance include an enrollee with a disability, acute condition, life-threatening illness, or who is past the 24th week of pregnancy."
 - Physicians should consider notifying the insurer in writing of the patients whom the physician believes meet the definition of a patient of "special circumstances."
 - Physicians should review their contract with the insurer to determine if there are additional requirements.
 - The termination proposed by the insurer does not relieve the physician of any professional obligations that may be owed to patients.

- An insurer must pay for services provided to patients of special circumstance at not less than the contract rate in exchange for the patient's continued receipt of ongoing treatment. This would not apply if the proposed termination was based upon allegations of incompetence or unprofessional behavior.
- *Prohibition on Early Termination Notification to Patients.*
 - Texas Insurance Code Section [1301.160](#) generally prohibits a PPO from notifying patients of the proposed termination until the later of the effective date of the termination or the time at which an advisory panel makes a formal recommendation to the insurer.
 - Texas Insurance Code Section [843.308](#) generally prohibits a HMO from notifying patients of the proposed termination until the effective date of the deselection or the advisory panel makes a formal recommendation.
 - Unfortunately, Section [843.309](#), may conflict with the general statement above as it requires a contract between a physician and HMO to mandate "reasonable advance notice" to patients of the impending termination from the plan.

Contractual Rights and Limitations

In addition to the basic rights/limitations dictated by Texas law and regulations, the physician may have additional rights or obligations under his or her contractual agreement with insurer. It is, therefore, important for each physician to review his or her own contract and the associated policies and procedures with the assistance of his or her retained legal counsel.

A physician may want to review:

- his or her contract with the insurer to ensure this particular termination notice conforms with the contract terms for termination without cause.
- his or her contract with the insurer for any limitation on how a physician may communicate with patients enrolled with the insurer. For instance, the contract may require the insurer to approve any correspondence before it is sent to patients.
- the time frames for termination and appeal rights within the contract with the insurer to ensure that the contract does not impose time frames that are more stringent than are outlined in the law or in this particular notice of termination.
- the contract provisions regarding continuity of care after termination as they may differ from the minimums provided by Texas law as discussed above.

Specific Guidance

- For interpretation of your contract or the Insurance Code provisions linked below or for specific guidance in this process, you must contact your retained legal counsel.

Complaints to the Texas Department of Insurance

- Complaints regarding improper termination or violation of the rights discussed by this whitepaper may be filed with the Texas Department of Insurance at: <https://wwwapps.tdi.state.tx.us/inter/perlroot/consumer/complform/complform.html>

TMA Help and Other Resources

Physicians who wish to have a professional consultant to generally review their practice billing or improve the management of their practice may consider contacting TMA Practice Consulting at: <http://www.texmed.org/template.aspx?id=1114>

Insurance Code

§§ [843.306](#), [843.307](#), [843.308](#), [843.309](#), [843.313](#), [843.362](#), [1301.057](#), [1301.058](#), [1301.153](#), [1301.154](#), [1301.160](#).

Insurance Regulations

28 Texas Administrative Code §§ [3.3706](#) and [11.901](#)

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