

September 28, 2010



TEXAS HOSPITAL ASSOCIATION

Doug Danzeiser  
Deputy Commissioner  
Life, Health and Licensing Division  
Texas Department of Insurance  
333 Guadalupe  
Austin, Texas 78701

Dear Doug,

On behalf of the Texas Hospital Association, we are submitting comments to the "Informal Working Draft of Rules Relating to Network Adequacy Requirements." THA acknowledges and appreciates TDI's efforts to study this issue and the department's willingness to solicit stakeholder groups' input.

These comments restate our remarks made during the September 21<sup>st</sup> stakeholder meeting.

- 1) Section 3.3703(4) (A). Contracting Requirements. This provision requires that facilities give insurers' notice no later than five days following the termination of a contract between the facility and a facility-based physician group that is a preferred provider for the insurer.

**THA comments:** To strictly comply with this requirement, facilities will have to change any contracts with facility-based physicians or the facility's medical staff bylaws to require that facility-based physicians provide the facility with a listing of all insurers that the physicians are a preferred provider. Even if these contract and bylaws amendments are made, compliance with this requirement will be dependent upon physician compliance with this new reporting requirement. Alternatively, facilities will provide notice to all contracted insurers of any termination of a facility-based physician contract and the insurer will have to determine whether that physician is a network provider.

In addition, THA recommends that TDI clarify the time period for notification is based on "business days".

- 2) Section 3.3703(4)(B). Contracting Requirements. This provision requires facilities to include in its contracts with facility-based physicians a requirement that the physicians agree to make public disclosure of its customary fees for certain professional services and that the physicians provide information in response to surveys of physician fees.

**THA comments:** As discussed during stakeholder's meeting, it seems appropriate to modify Section 3.3703(4)(B)(i) to clarify that disclosure of the physicians' fees should be limited to prospective patients. Such a clarification would be consistent with the intent of House Bill 2256.

- 3) Section 3.3704(e) Network Requirements. This subsection establishes standards that will allow the department to determine whether an insurer has developed an adequate provider network.

**THA comments:** THA strongly supports the development of appropriate and measurable standards for network adequacy. While the proposed requirements establish a reasonable approach, THA recommends that this section of the rules also address the adequacy of the number of facility-based physicians who have privileges at preferred provider hospitals located within the insurer's designated service area. Since much of the concern and impetus behind the passage of House Bill 2256 was to address balance billing by facility-based physicians, the network adequacy standards must cover these physicians.

- 4) Section 3.3705(b)(14)(C)(ii) and (iii). Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations. These provisions require the insurer to provide network demographics including: "(ii) the percentage of preferred provider hospitals in the service area or region [that are] accredited by the Joint Commission; and (iii) the average surgical site infection rate at each specific preferred provider hospital in the service area or region." [emphasis added]

**THA comments:** Providing information on the number of hospitals in a service area or region that are Joint Commission accredited may be useful to knowledgeable consumers. However, a number of hospitals are now accredited by organizations other than the Joint Commission and there may be a continued movement away from the Joint Commission as the primary accredited body for hospitals. Therefore, THA recommends that the phrase "the Joint Commission" be deleted and that the following be inserted "a national accreditation organization".

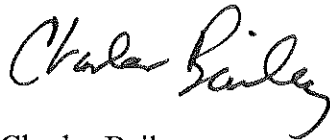
Additionally, THA has concerns with the requirement that insurers provide information on the average surgical site infection rate at contracted hospital in the service area. While THA has supported public disclosure of hospital infection rates, it is unclear how the infection rate would be determined by the insurer or what source of information would be used to determine this rate. Further, if this type of information is to be developed and made available by insurers, the insurers should be required to establish a process for the identification of these types of infections, how the infection rate was determined and how hospitals would be given the opportunity to review, comment and suggest correction of the data to be disclosed if there were questions or concerns about the validity of the data or the calculation of the infection rate.

- 5) Section 3.3705 (l)(11)(A) (B). This provision requires that provider directories include information regarding whether the "preferred provider facility's customary fees reflect the facility's cost of uncompensated care" and "provide a mechanism by which insureds may obtain specific information about the impact of uncompensated care on the insurer's premium rates".

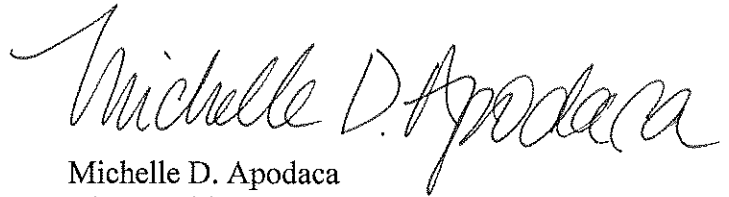
**THA comments:** THA and Texas hospitals acknowledge that the uncompensated care provided by hospitals results in a cost shift to private health insurers. Hospitals and other providers also must shift the costs that are not adequately reimbursed by various governmental programs, including Medicare and Medicaid. An assessment of a facility's level of uncompensated care and how that impacts a facility's fees or indirectly an insurer's premium rates would be difficult or impossible for insurer to determine. THA questions whether analyzing a facility's level of uncompensated care against an insurer's premium rates will produce anything but confusion and misinformation for the average consumer. THA recommends that this provision be deleted from the rules.

Thank you again for allowing THA the opportunity to comment on these draft rules. Should you have questions or wish to discuss THA's comments, please feel free to contact us.

Sincerely,



Charles Bailey  
Senior Vice President,  
General Counsel



Michelle D. Apodaca  
Vice President,  
Government Relations