

Texas' "Goldcarding" law HB 3459 (2021)

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TDI | Agenda

- Texas “goldcarding” statute.
- Implementation process.
- Outcomes and challenges.
- Overview of law and rules.
- Questions.

TDI | Statute enacted by HB 3459

- **Bill:** [House Bill 3459](#) (87th Legislature), 2021.
- **Statute:** Texas Insurance Code (TIC) Chapter 4201, [Subchapter N](#): *Exemption from preauthorization requirements for physicians and providers providing certain health care services.*
- **Applicability:** State-regulated health plans offered by HMOs, PPOs, and EPOs. Also applies to state employee and teacher plans. Doesn't apply to Medicaid or CHIP.
- **Requirement:** Health plans must provide exemptions from a preauthorization requirement for a particular health care service if the provider has a 90% approval rate for that service.

TDI | Implementation process

Rules adopted in 2022:

- Title 28 of the Texas Administrative Code (TAC) 19.1730 – 19.733 – Preauthorization Exemptions.
 - [Adoption order](#)
 - [Administrative Code](#)
- 28 TAC 12.601 – Independent Review of Preauthorization Exemptions.
 - [Adoption order](#)
 - [Administrative Code](#)
- [Form LHL011](#) – Notice of Rescission of Preauthorization Exemption and Right to Request an Independent Review.

- TDI hosted a [webinar](#) in September 2022.
- Based on questions received during and after the webinar, TDI published [Frequently Asked Questions](#).
- The biggest source of questions were from providers believing they should qualify but didn't receive a notice of exemption.
 - In most cases the threshold wasn't met based on preauthorization requests for TDI-regulated plans.
 - Providers had difficulty distinguishing between requests submitted to affiliated issuers for different plan types.

TDI | Initial outcomes

- TDI conducted a survey in January 2023, following the initial round of exemptions due October 2022. On average:
 - Preauthorization was applied to 21% of claims and 85% of requests were approved, prior to implementation.
 - Preauthorization requirements applied to 3,000 distinct services.
 - Only 4% of providers met the threshold for evaluation for one or more services and only 3% received an exemption.
 - Exemptions were approved for 74% of providers who met the evaluation threshold.

TDI | Policy considerations

- Impact was smaller than expected. Things that could increase the impact:
 - Lengthen evaluation period from six months to 12 months.
 - Reduce granularity of “particular health care service.”
 - Reduce the threshold of five preauthorization requests.
 - Require issuers to combine data for providers across all affiliated entities, including those not subject to the law.
- Legislation was considered but not enacted ([HB 4343](#)).

TDI | Overview of law and rules

- The following slides are an excerpt of the presentation shared with stakeholders in September 2022.
- View the [full presentation](#) for more detail.

TDI | Key definitions

For more, see [TAC 19.1730](#).

- “Health care services,” “physician” and “provider” are defined broadly: [TIC 843.002](#)(13), (22), and (24).
- A “particular health care service” is one that is listed on an issuer’s website as subject to preauthorization.
 - Listing was required by [SB 1742](#) (2019).
 - Rules: [TAC 19.1718\(j\)](#).
- A “preauthorization exemption” is applicable to care rendered or ordered by a “treating physician or provider.”

TDI | Eligibility for exemptions

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

TDI | Treating providers

- Under [TAC 19.1731](#):
 - Exemptions are granted using the National Provider Identifier (NPI) under which preauthorization requests are made.
 - Exemptions apply to care ordered, referred, or provided by the treating provider with the exemption.
 - Nurses and PAs practicing under the supervision of a physician can rely on an exemption, as appropriate.
 - A provider that performs care ordered or referred by a provider with an exemption must include the name and NPI of the ordering provider on the claim.

TDI | Examples of eligible services

- A provider could qualify for an exemption for any type of service for which they commonly submit a preauthorization request – even if the service is ultimately provided by a different provider. For example:
 - Surgery.
 - Prescription drugs.
 - Imaging.
 - Physical therapy.

TDI | Initial evaluation

- Initial “evaluation period” [TAC 19.1730\(5\)](#): Jan. 1, 2022-June 30, 2022.
- Notice is due within five days of completing an evaluation.
 - Deadline for initial evaluation period: Oct. 1, 2022.
 - Deadline for subsequent evaluation periods: two months following the day after the end of the evaluation period.
- By rule, the evaluation to grant an exemption must be based on at least five eligible preauthorization requests; otherwise, no notice is required ([TAC 19.1731\(b\)](#) and [TAC 19.1732\(c\)](#)).
- The exemption must be in place for at least six months before it may be rescinded ([TAC 19.1732\(a\)](#)).

TDI | Example: Initial evaluation is denied

Initial evaluation
Jan. 1-June 30, 2022

Initial notice of
denial issued by
Oct. 1, 2022

Next evaluation
period
July 1-Dec. 31, 2022

Notice issued by
March 1, 2023

TDI | Example: Initial evaluation is granted

Initial evaluation
Jan. 1-June 30, 2022

Initial notice of
exemption issued by
Oct. 1, 2022

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

TDI | Continued eligibility

- Issuers may continue exemptions without subsequent evaluations ([TIC 4201.653\(c\)](#)).
- While an exemption is in effect, an issuer:
 - Can't deny payment based medical necessity, except for material misrepresentation or 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.

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

TDI | Example: Exemption is rescinded

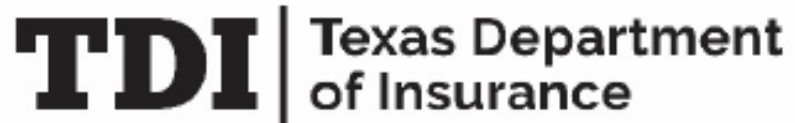
Rescission evaluation
Oct. 1, 2022-
March 31, 2023
(or later)

Rescission notice
issued
June 1-30, 2023

Next evaluation
period
April 1-Sept. 30, 2023

Notice issued by
Dec. 1, 2023

TDI's [LHL011](#) form illustrates requirements for issuers to provide rescission notices and IRO request forms.



LHL011 | 0722

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

Important information and instructions

Date of notice: _____

Unless you request an appeal to an independent review organization (IRO) as set forth below, the preauthorization exemption for _____ will be rescinded effective _____.

Health care service Date

TDI | Appeal of rescission

- An “adverse determination regarding a preauthorization exemption” (that one or more claims retrospectively reviewed as part of an evaluation did not meet the issuer’s screening criteria and leads to a rescission) is subject to appeal to an independent review organization.
- A physician or provider may 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 | Request for review by an IRO

- Issuers will submit IRO requests to TDI for exemptions using existing processes.
- See [TDI's website](#) and [Online IRO Request System](#).

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, 2023
(date requested starts
30-day IRO clock)

Issuer sends IRO request
to TDI; TDI assigns to IRO
(one working day each)

IRO must complete
review by 30th day; issuer
must send decision to
provider in five days

Visit: tdi.texas.gov/health/hb3459.html

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