



OFFICE OF PUBLIC INSURANCE COUNSEL

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Via E-mail: Rules.Development@tmb.state.tx.us

Texas Medical Board
Rules Development
P.O. Box 2018
Austin, TX 78768-2018

Re: Texas Medical Board Rule Proposal Out-of-Network Provider Notice and Disclosure Requirements 22 TAC § 165.7

The Office of Public Insurance Counsel (OPIC) appreciates the opportunity to comment on the Texas Medical Board's (TMB) proposed rules regarding notice and disclosure requirements for out-of-network care established by Senate Bill 1264, 86th Legislature. OPIC submits the following comments for the board's consideration.

1. Proposed 22 Texas Administrative Code (TAC) § 165.7(c) requires a notice and disclosure to be "in a form that substantially complies with the board approved notice and disclosure statement and Texas Insurance Code requirements." Qualifying that the form of a notice and disclosure statement must "substantially" comply with the form set out by TMB creates ambiguity that could lead to partial noncompliance with those requirements.

The form and content of the statements that consumers receive should fully comply with the requirements of the notice and disclosure statements approved by TMB through the rulemaking process. If a statement fails to meet any of the board's requirements, TMB should take appropriate action to ensure full compliance with its rules. Removing "substantially" from proposed Section 165.7(c) would clarify that compliance with the board's requirements for the notice and disclosure statement is not discretionary. Making this requirement clear would ensure that consumers receive all of the information required by the rule, in a consistent format, and that there is a clear standard.

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2. As proposed, the statement in Figure 1: 22 TAC § 165.7(j) asks the patient or enrollee to acknowledge that they have been informed of and received a copy of the required notice and disclosure statement followed by a list of the out-of-network providers. Consumers would benefit if additional context was provided at the beginning of this document to explain why they are receiving the notice and disclosure.

The information in the statement in Figure 1 should be presented in a sequence that first explains to the consumer the distinction between in-network or out-of-network care. This could be achieved by moving the third item in Figure 1 where consumers must acknowledge that they understand that they are getting care out-of-network to the beginning of the document. This item should also include additional information that explains to the consumer that proceeding with the out-of-network care will have financial implications that are not covered by their insurance. By including this context at the beginning of the document, consumers will likely have a better understanding of the items that follow and will be better equipped to make an informed decision on whether to proceed with getting care out-of-network.

3. Consumers would also benefit if they were informed of their option to decline the out-of-network care at an earlier point in the notice and disclosure. As currently drafted, Section 165.7(h)(2) requires the notice and disclosure statement to include “an option for the enrollee to decline the nonemergency health care or medical services at the projected amounts presented in the notice and disclosure statement.” Proposed Figure 1 includes this information at the very end of the document as part of the final item that consumers must acknowledge.

The option to decline should immediately follow the explanation that they are getting care from an out-of-network provider and that there will be financial implications if they proceed. It is not necessary to provide the consumer with projected amounts for which they may be responsible, or to have the consumer acknowledge they have received documents, if they know they want to decline the out-of-network care after being informed that there will be costs not covered by their insurance. TMB should amend Section 165.7(h)(2) to remove the specification that the option to decline be for projected amounts, and should make this option the second item listed in Figure 1. The projected amounts for which the consumer may be responsible if they decide to proceed should be included later in the document, separate from the option to decline.

4. Finally, consumers would benefit if the content of the board approved notice and disclosure statements in Figures 1 and 2: 22 TAC § 165.7(j) was in plain language and that TMB required the information to be provided in at least 12-point font. Complex sentence structures and advanced vocabulary can be difficult for many consumers to understand. Similarly, small font sizes can be difficult for some consumers to read. Wherever possible, TMB should seek to identify terms that could be replaced with more commonly used terms, remove unnecessary words, and reframe sentences in the simplest manner possible to help consumers understand what they are considering and the implications of their decisions. It is important to remember that it is consumers who will

suffer financial consequences if they do not fully understand their decision to use an out-of-network provider.

Accordingly, OPIC believes all of the aforementioned suggestions are important for protecting Texas consumers and should be part of any rule adopted by TMB. Thank you for your attention to our comments. OPIC appreciates your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Melissa R. Hamilton". The signature is written in a cursive, flowing style.

Melissa R. Hamilton

Public Counsel