



Physicians Caring for Texans

Basic Steps for Reviewing and Disputing Physician Rankings and Tierings in Texas under [Chapter 1460, Insurance Code](#)

Step 1: Collect and review all letters and documentation received from the health plan regarding your ranking or tiering.

- Reviewing the plan's paperwork will enable you to follow the other steps referenced in this document (as well as those steps that are specifically required by your individual plan).

Step 2: Determine whether your plan is subject to the requirements of Texas law (i.e., Insurance Code, Chapter 1460) on physician ranking and tiering.

- Under Texas law, most health benefit plan issuers (e.g., insurance companies and HMOs) and their affiliates or subsidiaries are not permitted to rank, tier, or compare physicians without following certain basic requirements (discussed in more detail below).
- Texas' physician ranking law, however, does not apply to rankings performed by a Medicaid program, a Medicaid managed care program, CHIP, Medicare Advantage plans, or a Medicare supplemental benefit plan. If the plan/program that is ranking you is one of the exempted groups, please follow the appeals process as noted in the plan's documentation.

Step 3: Determine the basis for your appeal, if possible, or request more information. The following are examples of grounds for contesting a ranking/tiering under Texas Law.

- The ranking is based upon inaccurate data (e.g., wrong patient data);
- The ranking is based solely on cost measures (rather than cost measures used in conjunction with quality measures as is required under Chapter 1460 of the Texas Insurance Code);¹
- The standards and measurements used were not disclosed to you *before* the evaluation period for the ranking (as is required under Chapter 1460).² Instead, the standards and measures were applied retroactively and based upon old data.
- The standards and measures used in the program fail to comply with the hierarchy of standards established under the law and the regulations.³
- The program did not have physicians currently in clinical practice actively involved in the development of the standards used in the comparison program (as is required by Texas Insurance Code §1460.006);
- The measures and methodology used in the comparison program are not transparent and /or valid and are, therefore, in contravention of Texas Insurance Code §1460.006.

Step 4: Initiate the appeal/dispute process. Under Texas law, each physician is afforded, before the publication or other public dissemination, of a ranking, an opportunity to dispute the ranking through a process that includes certain due process protections (as noted below).

- **Request data/information pertinent to the ranking/tiering.** If you have not been provided with enough information to analyze and/or adequately challenge your ranking, request the additional data that is needed.
 - Under Texas law, the health plan is required to provide at least 45 days' written notice to the physician of the proposed ranking, "including the methodologies, data, and all other information utilized by the plan ..." in its ranking/tiering.
- **Request a review/fair reconsideration proceeding within 30 days of receiving notice of the ranking** (along with the information utilized by the plan in its ranking decision).
 - If timely requested, the plan must provide (in addition to any written fair reconsideration process) a fair reconsideration proceeding, which may be conducted (at the physician's option): 1) by teleconference, at an agreed upon time; or 2) in person, at an agreed upon time, or between 8 am and 5 pm, Monday through Friday.
- **Prepare for the fair reconsideration proceeding.** Under Texas law, the physician has a right to provide information at the requested proceeding, have a representative participate in the proceeding, and submit a written statement at the conclusion of the proceeding. To most effectively challenge a ranking, the physician should prepare all the necessary information/statements in advance.
 - Texas law requires the plan to provide a written communication of the outcome of the proceeding (including the specific reasons for its decision) prior to any publication or dissemination of the ranking.

Step 5: If you believe that a health plan has not adhered to the requirements of Chapter 1460, Insurance Code, you may file a complaint with the Texas Department of Insurance.

- Email: ConsumerProtection@tdi.state.tx.us
- Mail: Texas Department of Insurance Consumer Protection (111-1A)
P.O. Box 149091
Austin, Texas 78714-9091
- Fax: (512) 475-1771

NOTICE: This information is provided as a commentary on legal issues and is not intended to provide advice on any specific legal matter. This information should NOT be considered legal advice and receipt of it does not create an attorney-client relationship. This is not a substitute for the advice of an attorney. The Office of the General Counsel of the Texas Medical Association provides this information with the express understanding that 1) no attorney-client relationship exists, 2) neither TMA nor its attorneys are engaged in providing legal advice, and 3) the information is of a general character. Although TMA has attempted to present materials that are accurate and useful, some material may be outdated, and TMA shall not be liable to anyone for any negligence, inaccuracy, error, or omission, regardless of cause, or for any damages resulting therefrom. Any legal forms are only provided for the use of physicians in consultation with their attorneys. You should not rely on this information when dealing with personal legal matters; rather you should seek legal advice from retained legal counsel.

¹ See 35 TexReg 3843 in which the Texas Department of Insurance states that "the Department further agrees that the reference to the CPDP provides insight into the background of HB 1888 and that a health benefit plan issuer ranking system based solely on cost would not be compliant with the adopted rule."

² See Tex. Ins. Code §1460.003(a)(3).

³ Note that 28 Tex. Admin. Code §21.3202(d)-(f) provides that a health benefit plan issuer (HBPI) that uses a physician ranking system is required to first follow the endorsed measures, guidelines and standards of the NQF or the AQA Alliance. If neither NQF nor AQA Alliance has an endorsed measure, guideline, or standard regarding an issue, then the HBPI must follow the endorsed measures, guidelines, and standards of the NCQA and other similar national organizations. If the NQF, AQA Alliance, or other national organizations (including NCQA) have not established standards or guidelines regarding an issue, then the HBPI must follow measures, guidelines and standards based on other bona fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship standards adopted by the Commissioner (after petitioning for rule-making with the Department to request that the Commissioner consider adopting other bona fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship standards for use in the HBPI's physician ranking system). See 35 TexReg 3841.