



May 10, 2010

Commissioner Mike Geeslin
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

Dear Commissioner Geeslin,

Thank you for allowing the Texas Ambulatory Surgery Center Society (TASCS) to comment on the informal working draft of rules related to network adequacy requirements. TASCS serves as the state-based trade association for the Texas ASC industry. With nearly 400 facilities, Texas has one of the largest concentrations of ASCs in the nation.

Specifically, TASCS would like to focus on several points:

Definition of an ASC (§3.3702(4)(A). Definitions.)

TASCS is concerned that the inclusion of “ambulatory surgery centers” (ASCs) in the draft rules will or may be interpreted to subject ASCs to the mediation laws of HB 2256. TASCS is aware that HB 2256 mediation laws do not apply to ASCs. Accordingly, TASCS would like to ensure that the intent inclusion of ASCs in the definition section does not bring ASCs into the mediation portion of HB 2256. Doug Danzeiser of TDI was asked this specific question at the May 5, 2010 stakeholder meeting. Mr. Danzeiser indicated that it was not TDI’s intent to bring ASCs into the mediation provisions.

Contracting Requirements (§3.3703(a)(22). Contracting Requirements.) – Out-of-Network Providers

TASCS is very concerned about language which allows the health plans to place any type of obstacle or burden on the physicians’ independent medical judgment. Previous holdings by the Attorney General have found that some of our health plans have attempted to and have actually punished or threatened physicians within their provider networks for referring patients to out of network providers. TASCS believes that the new section (22) regarding out-of-network providers will have a detrimental effect on a patient’s access to health care providers and an unwarranted interference with a physician’s independent medical judgment.

In addition, these rules apply only to PPO products in which the insureds have purchased (paid a higher price) for the ability to see providers out of network. It seems ironic that access to an out of network provider will face greater burden.

TASCS is also greatly concerned as to the burden and liability implications this particular provision will place on physicians. The concern is enhanced because most providers and patients never really know whether the services are covered until after the bill arrives, no matter how diligent the patient or the providers are. As stated at the May 5, 2010 stakeholder meeting,

the network status of providers and facilities constantly changes. It is difficult for a provider to be expected to keep up with the network status of others. As a result, this burden of notifying a patient should be placed on the commercial insurance carrier, not the provider.

Contracting Requirements (§3.3703(a)(4). Contracting Requirements.) – Staff Privileges

TASCS is concerned with the proposed elimination of the existing state law that does not allow a facility to require a physician or practitioner to enter into a preferred provider contract as a condition for staff privileges. TASCS believes that a provider’s commercial insurance network status should not be a pre-requisite for staff privileges. Instead, the provider’s ability to provide high-quality care to patients should be the foundation for staff privileges.

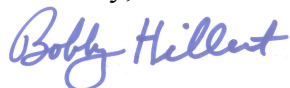
Contracting Requirements (§3.3704(e). Freedom of Choice; Availability of Preferred Providers.) – Availability of Preferred Providers

TASCS believes that networks should be required to have a sufficient number of ASCs in their provider networks. Surgeries and procedures performed in ASCs are less expensive and more efficient and convenient for the insureds. The ASC model for health care delivery is a “tried and true” model for high quality, efficient health care, and the networks should reflect the needs of the patients from a care and cost perspective. Accordingly, TASCS believes that this section should clearly set out requirements for ASCs to be included in the networks.

In addition, TASCS would like to point out that Texas has over 400 licensed ASCs, and each offers a unique array surgeries and procedures. Accordingly, the networks should reflect this and offer a wide variety of ASCs within each network.

We found the May 5, 2010 stakeholder meeting to be very useful and look forward to participating in the next draft and stakeholder meeting as the ASC industry’s voice during this process.

Sincerely,



Bobby Hillert
Executive Director
Texas Ambulatory Surgery Center Society