



Texas Association of Health Plans
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June 8, 2026

Re: Comments on Proposed 28 TAC §21.3202 (Physician Ranking)

Texas Department of Insurance,

Texas Association of Health Plans (TAHP) is the statewide trade association representing health insurers, health maintenance organizations, and other related health care entities operating in Texas. On behalf of our member plans, we submit these comments on the Texas Department of Insurance's (TDI) proposed rule to repeal and replace 28 TAC §21.3202, implementing Senate Bill 926 (89th Legislature, 2025).

Support for the Proposed List of Designated Organizations

TAHP and its member plans support the inclusion of the organizations identified in the proposed rule as entities whose standards may be used by health benefit plan issuers for the ranking or tiering of physicians. TAHP participated in the November 2025 nomination process, and we appreciate that the Department has incorporated those nominations into the proposal.

Support for the Interim Designation Mechanism

TAHP and its member plans commend the Department for including an interim designation mechanism that allows the Commissioner to designate qualifying entities by order. This is a reasonable and practical solution that reflects the realities of the health care industry, where accreditation organizations and quality standards evolve continuously. Requiring full rulemaking each time a new entity seeks designation would create unnecessary delays and could leave enrollees without access to current, high-quality information. TAHP supports this approach and encourages the Department to use it as needed.

NCQA Certification Should Satisfy the Designation Requirement

TAHP understands the intent of the statutory changes made under SB 926 and the subsequent proposed changes to 28 TAC §21.3202. We are concerned, however, that without additional clarification, the rule may unnecessarily limit the use of provider quality standards that were developed in a transparent manner in conjunction with providers.

Specifically, TAHP urges the Department to clarify that if a health benefit plan's program is certified by a designated organization listed under the proposed rule, the plan's standards should be considered compliant under Insurance Code §1460.003(a)(1) without requiring a separate designation. The statute requires that health benefit plan standards used to rank or classify

providers be “developed or prescribed by an organization designated by the commissioner.” When a listed organization certifies a health benefit plan’s program, that program’s standards are inherently prescribed by that organization for use by health benefit plan issuers for ranking or tiering physicians. Our suggestion aligns with both the intent of the law and the requirements of the proposed rule.

Texas Insurance Code §847.005 reinforces this reading. That provision establishes that a health benefit plan issuer “is presumed to be in compliance with state statutory and regulatory requirements if” it “has received nonconditional accreditation by a national accreditation organization” and “the national accreditation organization's accreditation requirements are the same, substantially similar to, or more stringent than the department's statutory or regulatory requirements.” Where an issuer uses physician ranking standards that have been certified by an NCQA-accredited process, the §847.005 presumption of compliance should apply.

NCQA is widely recognized as the gold standard in certifying health benefit plan operations, and TAHP supports its inclusion in the proposed rule. Many health benefit plans use programs with provider measurement standards that hold NCQA’s Patient and Hospital Quality Certification. NCQA certification is granted on the basis that standards meet key criteria, including that they are transparent, maintain proper provider disclosure and rights to remedy contested measures, are nationally recognized, nondiscriminatory, and developed in conjunction with providers. Certification through NCQA should therefore be sufficient to establish that a health plan’s standards and measurements comply with §1460.003(a), as that is precisely the outcome the statute was designed to promote.

TAHP encourages the Department to include language in the final rule confirming that certification of a health benefit plan’s program by a designated organization constitutes compliance with the designation requirement under Insurance Code Chapter 1460, so that compliant programs may continue operating on behalf of Texas patients and providers.

Effect of *Healthy Vision Association* and Request for Guidance

TAHP feels strongly that several provisions of Senate Bill 926, including restrictions on physician ranking systems under Insurance Code §1460.003, are likely unconstitutional in light of the decision in *Healthy Vision Association v. Brown*, N.D. Tex., No. 23-cv-167 (Feb. 19, 2026). That case, which is currently on appeal, held that similar restrictions on how health plans may communicate with enrollees regarding provider selection constitute impermissible restrictions on protected commercial speech under the First Amendment.

While TAHP recognizes that the rule must be promulgated consistent with current statutory requirements, we are concerned that portions of this rule may ultimately be unenforceable in light of the *Healthy Vision* ruling and any subsequent appellate decision. TAHP respectfully requests that TDI monitor the progress of the appeal and, once the case is finally resolved, promptly issue guidance to issuers regarding the enforceability of the physician ranking requirements and any adjustments to the rule that may be warranted.

Conclusion

TAHP and its member plans appreciate the Department's thoughtful approach to implementing SB 926 and the opportunity to submit these comments. We are available to discuss any of these issues further at the Department's convenience.

Sincerely,

A handwritten signature in black ink that reads "Jamie Dudensing". The signature is written in a cursive, flowing style.

Jamie Dudensing, RN
CEO, Texas Association of Health Plans