



Physicians Caring for Texans

April 26, 2021

Texas Department of Insurance  
Managed Care Quality Assurance Office  
333 Guadalupe  
Austin, Texas 78701

***Via email: MCQA@tdi.texas.gov***

*Re: Concerns regarding TRPN DirectPay as a Contracting Entity under Chapter 1458 of the Texas Insurance Code*

To Whom It May Concern,

The Texas Medical Association (TMA) writes to the Texas Department of Insurance (TDI) to express its concerns regarding an out-of-state contracting entity, TRPN DirectPay. TMA is a private, voluntary, non-profit association of more than 55,000 physician and medical student members. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, its vision is to “Improve the health of all Texans.”

Earlier this month, one of TMA’s members received a letter from TRPN DirectPay containing a purported Provider Settlement/Participation Agreement (PSPA) and a \$15 check.<sup>1</sup> The PSPA states that endorsement of the check constitutes acceptance of the PSPA.<sup>2</sup> In addition to the potentially confusing nature of purportedly entering into an agreement, TMA is concerned that the PSPA—and any similar purported agreements sent by TRPN DirectPay to other physicians in Texas—does not meet the requirements of the Insurance Code. Specifically, Chapter 1458 of the Insurance Code, which regulates provider network contract arrangements obtained by third-party contracting entities, such as TRPN DirectPay.

### **Chapter 1458’s Requirements**

Added to the Insurance Code in 2013, Chapter 1458 aimed, *inter alia*, to address inappropriate

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<sup>1</sup> A copy of this letter is attached as Exhibit A. The physician’s name, street address, and Tax ID have been redacted. If TDI requires an unredacted copy, please contact the TMA counsel listed at the end of this letter.

<sup>2</sup> Exhibit A (“Endorsement of the attached check shall serve as acceptance of payment for network participation and for all services provided to our membership AND as an authorized signature for the contract below.”).

access to provider network contracts.<sup>3</sup> Under Chapter 1458, for a contracting entity to share a provider payment or reimbursement information, a provider's express authority is required:

A contracting entity may not sell, lease, or otherwise transfer information regarding the payment or reimbursement terms of the provider network contract without the express authority of and prior adequate notification to the provider.<sup>4</sup>

TRPN DirectPay's PSPA does not seem consistent with this requirement. The PSPA states that "TRPN DirectPay provides its membership and clients access to all terms of this agreement,"<sup>5</sup> which would include the PSPA's payment terms.<sup>6</sup> However, in Chapter 1458, "[e]xpress authority" means a provider's consent that is obtained through separate signature lines for each line of business.<sup>7</sup> The PSPA does not contain any such signature lines (as it purports to establish a physician's agreement to PSPA by the endorsement of the enclosed check). As such, the PSPA does not seem capable of satisfying Chapter 1458's requirement for express authorization.

Additionally, Chapter 1458 requires a provider network contract to include language regarding a physician's right to request information regarding access to the physician's services and contractual discounts:

The provider network contract must require that on the request of the provider, the contracting entity will provide information necessary to determine whether a particular person has been authorized to access the provider's health care services and contractual discounts.<sup>8</sup>

TRPN DirectPay's PSPA contains no such language.<sup>9</sup>

Lastly, under Chapter 1458, a contracting entity must register with TDI not later than the 30th day after the entity begins acting as a contracting entity in Texas.<sup>10</sup> TMA is unaware as to whether TRPN DirectPay has registered with TDI as a contracting entity.

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<sup>3</sup> See Senate Committee on State Affairs, Bill Analysis, Tex. C.S.S.B. 822, 83rd Leg., R.S. (2013) ("Unfortunately, some third-party entities today profit from inappropriately accessing network contracts while inappropriately discounting physician or other health care provider payments. They do this without the physicians' or providers' permission or agreement.").

<sup>4</sup> Tex. Ins. Code § 1458.101(b); *see also* 28 Tex. Admin. Code § 3.9805(a) ("[T]he grant of express authority of a provider for access to their fee schedules cannot be presumed for any line of business for the purposes of compliance with Insurance Code § 1458.101.").

<sup>5</sup> Exhibit A.

<sup>6</sup> See Exhibit A ("All future payments may be made directly to the provider at the lesser of: 35 percent of billed charges, 10 percent off maximum allowable or 200 percent of Medicare with no exceptions allowed.").

<sup>7</sup> Tex. Ins. Code § 1458.001(4).

<sup>8</sup> Tex. Ins. Code § 1458.101(d).

<sup>9</sup> See Exhibit A.

<sup>10</sup> Tex. Ins. Code § 1458.051.

## **Conclusion**

TMA thanks TDI for any time and effort expended addressing these concerns. If you have any questions, please do not hesitate to contact Rocky Wilcox, Vice President and General Counsel, at [rocky.wilcox@texmed.org](mailto:rocky.wilcox@texmed.org); Kelly Walla, Associate Vice President and Deputy General Counsel, at [kelly.walla@texmed.org](mailto:kelly.walla@texmed.org); or Eamon Reilly, Assistant General Counsel, at [eamon.reilly@texmed.org](mailto:eamon.reilly@texmed.org).

Respectfully,

A handwritten signature in black ink, appearing to read "Donald P. Wilcox". The signature is fluid and cursive, with a small vertical mark above the 'i' in "Wilcox".

Donald P. "Rocky" Wilcox, JD  
TMA Vice President & General Counsel

Cc: Kelly M. Walla, JD, LLM, TMA Associate Vice President & Deputy General Counsel  
Eamon Reilly, JD, TMA Assistant General Counsel

# Exhibit A