

## **TITLE 230 - DEPARTMENT OF BUSINESS REGULATION**

### **CHAPTER 20 - INSURANCE**

#### **SUBCHAPTER 30 - HEALTH INSURANCE**

##### **Part 4 - Powers and Duties of the Office of the Health Insurance Commissioner**

#### **4.1 Authority**

This regulation is promulgated pursuant to R.I. Gen. Laws §§ 42-14.5-1 *et seq.*, 42-14-5, 42-14-17 and 42-35-1 *et seq.*

#### **4.2 Purpose and Scope**

A. When creating the Office of the Health Insurance Commissioner (OHIC or Office), the General Assembly created a list of statutory purposes for the OHIC at R.I. Gen. Laws § 42-14.5-2 (the OHIC Purposes Statute). In order to meet the requirements established by the OHIC Purposes Statute, the OHIC has developed this regulation, which is designed to:

1. Ensure effective regulatory oversight by the OHIC;
2. Provide guidance to the state's health insurers, health care providers, consumers of health insurance, consumers of health care services and the general public as to how the OHIC will interpret and implement its statutory obligations; and
3. Implement the intent of the General Assembly as expressed in the OHIC Purposes Statute.

#### **4.3 Definitions**

A. As used in this regulation:

1. "Affiliate" has the same meaning as set out in the first sentence of R.I. Gen. Laws § 27-35-1(a). An "affiliate" of, or an entity or person "affiliated" with, a specific entity or person, is an entity or person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the entity or person specified.

2. "Aligned Measure Sets" means any set of quality measures adopted by the Commissioner pursuant to § 4.10(D)(3)) of this Part. An Aligned Measure Set shall consist of measures designated as 'Core Measures' and/or 'Menu Measures.' Aligned Measure Sets are developed for specific provider contract types (e.g. primary care provider contracts, hospital contracts, Accountable Care Organization (ACO, or Integrated System of Care) contracts.
3. "Commissioner" means the Health Insurance Commissioner
4. "Core Measures" mean quality measures in an Aligned Measure Set that have been designated for mandatory inclusion in applicable health care provider contracts that incorporate quality measures into the payment terms (e.g., primary care measures for primary care provider contracts).
5. "Direct Primary Care Expenses" means payments by the Health Insurer directly to a primary care practice for:
  - a. Providing health care services, including fee-for service payments, capitation payments, and payments under other alternative, non-fee-for-service methodologies designed to provide incentives for the efficient use of health services;
  - b. Achieving quality or cost performance goals, including pay-for-performance payments and shared savings distributions;
  - c. Infrastructure development payments within the primary care practice, which the practice cannot reasonably fund independently, in accordance with parameters and criteria issued by order of the Commissioner, or upon request by a Health Insurer and approval by the Commissioner:
    - (1) That are designed to transform the practice into, and maintain the practice as a Patient Centered Medical Home, and to prepare a practice to function within an Integrated System of Care. Examples of acceptable spending under this category include:
      - (AA) Making supplemental payments to fund a practice-based and practice-paid care manager;
      - (BB) Funding the provision of care management resources embedded in, but not paid for by, the primary care practice;

- (CC) Funding the purchase by the practice of analytic software that enables primary care practices to analyze patient quality and/or costs, such as software that tracks patient costs in near-to-real time;
  - (DD) Training of members of the primary care team in motivational interviewing or other patient activation techniques; and
  - (EE) Funding the cost of the practice to link to the health information exchange established by R.I. Gen. Laws § 5-37.7;
- (2) That promote the appropriate integration of primary care and behavioral health care; for example, funding behavioral health services not traditionally covered with a discrete payment when provided in a primary care setting, such as substance abuse or depression screening;
- (3) For shared services among small and independent primary care practices to enable the practices to function as Patient-Centered Medical Homes Acceptable spending under this category:
- (AA) must directly enhance a Primary Care Practice's ability to support its patient population, and
  - (BB) must provide, reinforce or promote specific skills that Patient-Centered Medical Homes must have to effectively operate using Patient-Centered Medical Home principles and standards, or to participate in an Integrated System of Care that successfully manages risk-bearing contracts. Examples of acceptable spending under this category include:
    - (i) Funding the cost of a clinical care manager who rotates through the practices;
    - (ii) Funding the cost of a practice data analyst to provide data support and reports to the participating practices, and
    - (iii) Funding the costs of a pharmacist to help practices with medication reconciliation for poly-pharmacy patients;

- (4) That promote community-based services to enable practices to function as Patient Centered Medical Homes. Acceptable spending under this category:
    - (AA) must directly enhance a Primary Care Practice's ability to support its patient population, and
    - (BB) must provide, reinforce or promote specific skills that the Patient-Centered Medical Homes must have to effectively operate using Patient-Centered Medical Home principles and standards, or to participate in an Integrated System of Care that successfully manages risk-bearing contracts. Acceptable spending under this category includes funding multi-disciplinary care management teams to support Primary Care Practice sites within a geographic region;
  - (5) Designed to increase the number of primary care physicians practicing in RI, and approved by the Commissioner, such as a medical school loan forgiveness program; and
  - (6) Any other direct primary care expense that meets the parameters and criteria established in a bulletin issued by the Commissioner, or that is requested by a Health Insurer and approved by the Commissioner.
- 6. "Examination" has the same meaning as set out in R.I. Gen. Laws § 27-13.1-1 *et seq.*
- 7. "Health insurance" shall mean "health insurance coverage," as defined in R.I. Gen. Laws §§ 27-18.5-2 and 27-18.6-2, "health benefit plan," as defined in R.I. Gen. Laws § 27-50-3 and a "medical supplement policy," as defined in R.I. Gen. Laws § 27-18.2-1 or coverage similar to a Medicare supplement policy that is issued to an employer to cover retirees.
- 8. "Global Capitation Contract" means a Population-Based Contract with an Integrated System of Care that:
  - a. holds the Integrated System of Care responsible for providing or arranging for all, or substantially all of the covered services provided to the Health Insurer's defined group of members in return for a monthly payment that is inclusive of the total, or near total costs of such covered services based on a negotiated percentage of the Health Insurer's premium or based on a negotiated fixed per member per month payment, and

- b. incorporates incentives and/or penalties for performance relative to quality targets.
- 9. “Health insurer” means any entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the Commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including, without limitation, an insurance company offering accident and sickness insurance, a health maintenance organization, a non-profit hospital service corporation, a non-profit medical service corporation, a non-profit dental service corporation, a non-profit optometric service corporation, a domestic insurance company subject R.I. Gen. Laws Chapter 27-1 that offers or provides health insurance coverage in the state and a foreign insurance company subject to R.I. Gen. Laws Chapter 27-2 that offers or provides health insurance coverage in the state.
- 10. “Holding company system” has the same meaning as set out in R.I. Gen. Laws § 27-35-1 *et seq.*
- 11. “Indirect Primary Care Expenses” means payments by the Health Insurer to support and strengthen the capacity of a primary care practice to function as a medical home, and to successfully manage risk-bearing contracts, but which do not qualify as Direct Primary Care Expenses. Indirect Primary Care Expenses may include a proper allocation, proportionate to the benefit accruing to the Primary Care Practice, of Health Insurer investments in data, analytics, and population-health and disease registries for Primary Care Practices without the foreseeable ability to make and manage such infrastructure investments, but which do not qualify as acceptable Direct Primary Care Spending, in accordance with parameters and criteria issued in a bulletin issued by the Commissioner, or upon request by a Health Insurer and approved by the Commissioner. Such payments shall include financial support, in an amount approved by the Commissioner, for the administrative expenses of the medical home initiative endorsed by R.I. Gen. Laws § 42-14.6, and for the health information exchange established by R.I. Gen. Laws § 5-37.7. By May 1, 2016 the Commissioner shall reassess this obligation by Health Insurers to provide financial support for the health information exchange.
- 12. “Integrated System of Care”, sometimes referred to as an Accountable Care Organization, means one or more business entities consisting of physicians, other clinicians, hospitals and/or other providers that together provide care and share accountability for the cost and quality of care for a population of patients, and that enters into a Population-Based Contract, such as a Shared Savings Contract or Risk Sharing Contract or Global

Capitation Contract, with one or more Health Insurers to care for a defined group of patients.

13. "Menu Measures" means quality measures within an Aligned Measure Set that are included in applicable health care provider contracts that incorporate quality measures into the payment terms when such inclusion occurs at the mutual agreement of the Health Insurer and contracted health care provider.
14. "Patient-Centered Medical Home" means:
  - a. a Primary Care Practice recognized by the collaborative initiative endorsed by R.I. Gen. Laws § 42-14.6, or
  - b. a Primary Care Practice recognized by a national accreditation body, or
  - c. a Primary Care Practice designated by contract between a Health Insurer and a primary care practice, or between a Health Insurer and an Integrated System of Care in which the Primary Care Practice is participating. A contractually designated Primary Care Practice must meet pre-determined quality and efficiency criteria practice performance standards, which are approved by the Commissioner, for improved care management and coordination that are at least as rigorous as those of the collaborative initiative endorsed by R.I. Gen. Laws § 42-14.6.
15. "Population-Based Contract" means a provider reimbursement contract with an Integrated System of Care that uses a reimbursement methodology that is inclusive of the total, or near total medical costs of an identified, covered-lives population. A Population-Based Contract may be a Shared Savings Contract, or a Risk Sharing Contract, or a Global Capitation Contract. A primary care or specialty service capitation reimbursement contract shall not be considered a Population-Based Contract for purposes of this Section. A Population-Based Contract may not transfer insurance risk or any health insurance regulatory obligations. A Health Insurer may request clarification from the Commissioner as to whether its proposed contract constitutes the transfer of insurance risk.
16. "Primary Care Practice" means the practice of a physician, medical practice, or other medical provider considered by the insured subscriber or dependent to be his or her usual source of care. Designation of a primary care provider shall be limited to providers within the following practice type: Family Practice, Internal Medicine and Pediatrics; and providers with

the following professional credentials: Doctors of Medicine and Osteopathy, Nurse Practitioners, and Physicians' Assistants; except that specialty medical providers, including behavioral health providers, may be designated as a primary care provider if the specialist is paid for primary care services on a primary care provider fee schedule, and contractually agrees to accept the responsibilities of a primary care provider.

17. "Risk Sharing Contract" means a Population-Based Contract that:
  - a. holds the provider financially responsible for a negotiated portion of costs that exceed a predetermined population-based budget, in exchange for provider eligibility for a portion of any savings generated below the predetermined budget, and
  - b. incorporates incentives and/or penalties for performance relative to quality targets.
18. "Shared Savings Contract" means a Population-Based Contract that:
  - a. allows the provider to share in a portion of any savings generated below a predetermined population-based budget, and
  - b. incorporates incentives and/or penalties for performance relative to quality targets.

#### **4.4 Discharging Duties and Powers**

- A. The Commissioner shall discharge the powers and duties of the Office to:
  1. Guard the solvency of health insurers;
  2. Protect the interests of the consumers of health insurance;
  3. Encourage fair treatment of health care providers by health insurers;
  4. Encourage policies and developments that improve the quality and efficiency of health care service delivery and outcomes; and
  5. View the health care system as a comprehensive entity and encourage and direct health insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access.

## **4.5 Guarding the Solvency and Financial Condition of Health Insurers**

- A. The solvency of health insurers must be guarded to protect the interests of insureds, health care providers, and the public generally.
- B. Whenever the Commissioner determines that:
  - 1. The solvency or financial condition of any health insurer is in jeopardy or is likely to be in jeopardy;
  - 2. Any action or inaction by a health insurer could adversely affect the solvency or financial condition of that health insurer;
  - 3. The approval or denial of any regulatory request, application or filing by a health insurer could adversely affect the solvency or financial condition of that health insurer; or
  - 4. Any other circumstances exist such that the solvency or financial condition of a health insurer may be at risk the Commissioner shall, in addition to exercising any duty or power authorized or required by R.I. Gen. Laws Titles 27 or 42 related specifically to the solvency or financial health of a health insurer, act to guard the solvency and financial condition of a health insurer when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.
- C. When making a determination as described in § 4.5(B) of this Part or when acting to guard the solvency of a health insurer, the Commissioner may consider and/or act upon the following solvency and financial factors, either singly or in combination of two or more:
  - 1. Any appropriate financial and solvency standards for the health insurer, including those set out in R.I. Gen. Laws Title 27 and implementing regulations;
  - 2. The investments, reserves, surplus and other assets and liabilities of a health insurer;
  - 3. A health insurer's use of reinsurance, and the insurer's standards for ceding, reporting on, and allowing credit for such reinsurance;



4. A health insurer's transactions with affiliates, agents, vendors, and other third parties to the extent that such transactions adversely affect the financial condition of the health insurer;
5. Any audits of a health insurer by independent accountants, consultants or other experts;
6. The annual financial statement and any other report prepared by or on behalf of a health insurer related to its financial position or financial activities;
7. A health insurer's transactions within an insurance holding company system;
8. Whether the management of a health insurer, including its officers, directors, or any other person who directly or indirectly controls the operation of the health insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in the position;
9. The findings reported in any financial condition or market conduct examination report and financial analysis procedures;
10. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income, which could lead to an impairment of capital and surplus;
11. Concerns that a health insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to ensure the health insurer's ability to meet its outstanding obligations as such obligations mature;
12. The ability of an assuming reinsurer to perform and whether the health insurer's reinsurance program provides sufficient protection for the health insurer's remaining surplus after taking into account the health insurer's cash flow and the classes of business written and the financial condition of the assuming reinsurer;
13. The health insurer's operating loss in the last twelve month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent of the health insurer's remaining surplus as regards policyholders in excess of the minimum required;

14. Whether any affiliate, subsidiary, or reinsurer of a health insurer is insolvent, threatened with insolvency, or delinquent in the payment of its monetary or other obligations;
15. Any contingent liabilities, pledges, or guaranties of a health insurer that either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the health insurer;
16. Whether any person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a health insurer, is delinquent in the transmitting to, or payment of, net premiums to the insurer;
17. The age and collectability of a health insurer's receivables;
18. Whether the management of a health insurer has
  - a. Failed to respond to inquiries by the Commissioner, the Department of Business Regulation, the Department of Health, the Department of the Attorney General, any other state or federal agency relative to the financial condition of the health insurer;
  - b. Furnished false and misleading information concerning an inquiry by the Commissioner, the Department of Business Regulation, the Department of Health, the Department of the Attorney General, any other state or federal agency regarding the financial condition of the health insurer; or
  - c. Failed to make appropriate disclosures of financial information to the Commissioner, the Department of Business Regulation, the Department of Health, the Department of the Attorney General, any other state or federal agency, or the public.
19. Whether the management of a health insurer either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the health insurer;
20. Whether a health insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and
21. Whether a health insurer has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

- D. The factors enumerated in § 4.5(C) of this Part shall not be construed as limiting the Commissioner from making a finding that other factors not specifically enumerated in § 4.5(C) of this Part are necessary or desirable factors for the evaluation and maintenance of the sound financial condition and solvency of a health insurer.

## **4.6 Protecting the Interests of Consumers**

- A. The interests of the consumers of health insurance, including individuals, groups and employers, must be protected.
- B. The provisions of this regulation do not require the Commissioner to act as an advocate on behalf of a particular health insurance consumer. Instead, while the Commissioner will endeavor to address individual consumer complaints as they arise, the OHIC Purposes Statute requires the OHIC to protect the interests of health insurance consumers, including individuals, groups and employers, on a system-wide basis.
- C. Whenever the Commissioner determines that
  - 1. The interests of the state's health insurance consumers are, or are likely to be, adversely affected by any policy, practice, action or inaction of a health insurer;
  - 2. The approval or denial by the Commissioner of any regulatory request, application or filing made by a health insurer could adversely affect the interests of the state's health insurance consumers; or
  - 3. Any other circumstances exist such that the interests of the state's health insurance consumers may be adversely affected the Commissioner shall, in addition to exercising any duty or power authorized or required by R.I. Gen. Laws Titles 27 or 42 related specifically to the protection of the interests of the consumers of health insurance, act to protect the interests of consumers of health insurance when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.
- D. When making a determination as described in § 4.6(C) of this Part or when acting to protect the interests of the state's health insurance consumers, the

Commissioner may consider and/or act upon the following consumer interest issues, either singly or in combination of two or more:

1. The privacy and security of consumer health information;
  2. The efforts by a health insurer to ensure that consumers are able to
    - a. To read and understand the terms and scope of the health insurance coverage documents issued or provided by the health insurer and
    - b. Make fully informed choices about the health insurance coverage provided by the health insurer;
  3. The effectiveness of a health insurer's consumer appeal and complaint procedures for matters other than medical necessity and utilization review, which are within jurisdiction of the Department of Health;
  4. The efforts by a health insurer to ensure that consumers have ready access to claims information;
  5. The efforts by a health insurer to increase the effectiveness of its communications with its insureds, including, but not limited to, communications related to the insureds' financial responsibilities;
  6. That the benefits in health insurance coverage documents issued or provided by a health insurer are consistent with state laws;
  7. That the benefits delivered by a health insurer are consistent with those guaranteed by the health insurance coverage documents issued or provided by the health insurer; and
  8. The steps taken by a health insurer to enhance the affordability of its products, as described in § 4.9 of this Part.
- E. The factors enumerated in § 4.6(D) of this Part shall not be construed as limiting the Commissioner from making a finding that other consumer protection issues not specifically enumerated in § 4.6(D) of this Part are necessary or desirable factors upon which the Commissioner may act to protect the interests of consumers of health insurance.

#### **4.7 Encouraging Fair Treatment of Health Care Providers**

- A. The Commissioner will act to encourage the fair treatment of health care providers by health insurers.

- B. The provisions of this regulation do not require the Commissioner to act as an advocate for a particular health care provider or for a particular group of health care providers. Instead, while the Commissioner will endeavor to address individual health care provider complaints as they arise, the OHIC Purposes Statute requires the OHIC to act to enhance system-wide treatment of providers.
- C. Whenever the Commissioner determines that:
1. Health care providers are being treated unfairly by a health insurer;
  2. The policies or procedures of a health insurer place an undue, inconsistent or disproportionate burden upon a class or providers;
  3. The approval or denial by the Commissioner of any regulatory request, application or filing made by a health insurer will result in unfair treatment of a health care providers by a health insurer; or
  4. Any other circumstances exist such that Commissioner is concerned that health care providers will be treated unfairly by a health insurer the Commissioner shall, in addition to exercising any duty or power authorized or required by R.I. Gen. Laws Titles 27 or 42 related specifically to the fair treatment of health care providers, take the treatment of health care providers by a health insurer into consideration when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.
- D. When making a determination as described in § 4.7(C) of this Part or when acting to encourage the fair treatment of providers, the Commissioner may consider and/or act upon the following issues, either singly or in combination of two or more:
1. The policies, procedures and practices employed by health insurers with respect to provider reimbursement, claims processing, dispute resolution and contracting processes;
  2. A health insurer's provider rate schedules; and
  3. The efforts undertaken by the health insurers to enhance communications with providers.

- E. The factors enumerated in § 4.7(D) of this Part shall not be construed as limiting the Commissioner from making a finding that other factors related to the treatment of health care providers by a health insurer not specifically enumerated are necessary or desirable factors for the evaluation of whether health care providers are being treated fairly by a health insurer. The factors that may be considered by the Commissioner will not typically include those matters over which other agencies, such as the Department of Health, have jurisdiction.

#### **4.8 Improving the Efficiency and Quality of Health Care Delivery and Increasing Access to Health Care Services**

- A. Consumers, providers, health insurers and the public generally have an interest in:
  - 1. Improving the quality and efficiency of health care service delivery and outcomes in Rhode Island;
  - 2. Viewing the health care system as a comprehensive entity; and
  - 3. Encouraging and directing insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access.
- B. The government, consumers, employers, providers and health insurers all have a role to play in increasing access to health care services and improving the quality and efficiency of health care service delivery and outcomes in Rhode Island. Nevertheless, the state's health insurers, because of their prominent role in the financing of health care services, bear a greater burden with respect to improving the quality and efficiency of health care service delivery and outcomes in Rhode Island, treating the health care system as a comprehensive entity, and advancing the welfare of the public through overall efficiency, improved health care quality, and appropriate access. Furthermore, a balance must be struck between competition among the health plans, which can result in benefits such as innovation, and collaboration, which can promote consumer benefits such as standardization and simplification.
- C. Whenever the Commissioner determines that
  - 1. The decision to approve or deny any regulatory request, application or filing made by a health insurer
    - a. Can be made in a manner that will
      - (1) Improve the quality and efficiency of health care service delivery and outcomes in Rhode Island;

- (2) View the health care system as a comprehensive entity; or
    - (3) Encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access; or
  - b. Should include conditions when feasible that will
    - (1) Promote increased quality and efficiency of health care service delivery and outcomes in Rhode Island;
    - (2) Incent health insurers to view the health care system as a comprehensive entity; or
    - (3) Encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access; or
- 2. Any other circumstances exist such that regulatory action by the Commissioner with respect to a health insurer will likely improve the efficiency and quality of health care delivery and increase access to health care services the Commissioner shall, in addition to exercising any duty or power authorized or required by R.I. Gen. Laws Titles 27 or 42 related specifically to improving the efficiency and quality of health care delivery and increasing access to healthcare services, act to further the interests set out in § 4.8(C)(1)(a) of this Part when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.
- D. When making a determination as described in § 4.8(C) of this Part or when acting to further the interests set out in § 4.8(A) of this Part, the Commissioner may consider and/or act upon the following, either singly or in combination of two or more:
  - 1. Efforts by health insurers to develop benefit design and payment policies that:
    - a. Enhance the affordability of their products, as described in section 9 of this regulation;

- b. Encourage more efficient use of the state's existing health care resources;
  - c. Promote appropriate and cost effective acquisition of new health care technology and expansion of the existing health care infrastructure;
  - d. Advance the development and use of high quality health care services (e.g., centers of excellence); and
  - e. Prioritize the use of limited resources
- 2. Efforts by health insurers to promote the dissemination of information, increase consumer access to health care information, and encourage public policy dialog about increasing health care costs and solutions by:
  - a. Providing consumers' timely and user-friendly access to health care information related to the quality and cost of providers and health care services so that consumers can make well informed-decisions;
  - b. Encouraging public understanding, participation and dialog with respect to the rising costs of health care services, technologies, and pharmaceuticals; the role played by health insurance as both a financing mechanism for health care and as a hedge against financial risk for the consumers of health care; and potential solutions to the problems inherent in the health insurance market (e.g., market concentration, increasing costs, the growing population of uninsureds, market-driven changes to insurance products (such as the growth of high deductible plans) and segmentation of the insurance market due to state and federal laws); and
  - c. Providing consumers timely and user friendly access to administrative information, including information related to benefits; eligibility; claim processing and payment; financial responsibility, including deductible, coinsurance and copayment information; and complaint and appeal procedures;
- 3. Efforts by health insurers to promote collaboration among the state's health insurers to promote standardization of administrative practices and policy priorities, including
  - a. Participation in administrative standardization activities to increase efficiency and simplify practices; and



- b. Efforts to develop standardized measurement and provider payment processes to promote the goals set out in this regulation;
- 4. Directing resources, including financial contributions, toward system-wide improvements in the state's health care system related to quality, access and efficiency, including providing support to local collaboratives, organizations and initiatives that promote quality, access and efficiency;
- 5. Participating in the development and implementation of public policy issues related to health, including
  - a. Collaborating with state and local health planning officials;
  - b. Participating in the legislative and regulatory processes; and
  - c. Engaging the public in policy debates and discussions
- E. The factors enumerated in § 4.8(D) of this Part shall not be construed as limiting the Commissioner from making a finding that other factors may be considered when acting to further the interests set out in § 4.8(A) of this Part.

#### **4.9 Affordable Health Insurance - General**

- A. Consumers of health insurance have an interest in stable, predictable, affordable rates for high quality, cost efficient health insurance products. Achieving an economic environment in which health insurance is affordable will depend in part on improving the performance of the Rhode Island health care system as a whole, including but not limited to the following areas:
  - 1. Improved primary care supply, measured by the total number of primary care providers, and by the percentage of physicians identified as primary care providers.
  - 2. Reduced incidence of hospitalizations for ambulatory care-sensitive conditions, and of re-hospitalizations.
  - 3. Reduced incidence of emergency room visits for ambulatory care-sensitive conditions.
  - 4. Reduced rates of premium increase for fully insured, commercial health insurance.
- B. In discharging the duties of the Office, including but not limited to the Commissioner's decisions to approve, disapprove, modify or take any other action authorized by law with respect to a health insurer's filing of health

insurance rates or rate formulas under the provisions of R.I. Gen. Laws Titles 27 or 42, the Commissioner may consider whether the health insurer's products are affordable, and whether the carrier has implemented effective strategies to enhance the affordability of its products.

C. In determining whether a carrier's health insurance products are affordable, the Commissioner may consider the following factors:

1. Trends, including:
  - a. Historical rates of trend for existing products;
  - b. National medical and health insurance trends (including Medicare trends);
  - c. Regional medical and health insurance trends; and
  - d. Inflation indices, such as the Consumer Price Index and the medical care component of the Consumer Price Index.
2. Price comparison to other market rates for similar products (including consideration of rate differentials, if any, between not-for-profit and for-profit insurers in other markets);
3. The ability of lower-income individuals to pay for health insurance;
4. Efforts of the health insurer to maintain close control over its administrative costs;
5. Implementation of effective strategies by the health insurer to enhance the affordability of its products; and
6. Any other relevant affordability factor, measurement or analysis determined by the Commissioner to be necessary or desirable to carry out the purposes of this Regulation.

D. In determining whether a health insurance carrier has implemented effective strategies to enhance the affordability of its products, the Commissioner may consider the following factors:

1. Whether the health insurer offers a spectrum of product choices to meet consumer needs.
2. Whether the health insurer offers products that address the underlying cost of health care by creating appropriate and effective incentives for

consumers, employers, providers and the insurer itself. Such incentives shall be designed to promote efficiency in the following areas:

- a. Creating a focus on primary care, prevention and wellness.
  - b. Establishing active management procedures for the chronically ill population.
  - c. Encouraging use of the least cost, most appropriate settings; this goal is meant to apply in the aggregate. Use of some higher cost providers and settings do result in better outcomes and should not be discourage; and
  - d. Promoting use of evidence based, quality care.
3. Whether the insurer employs delivery system reform and payment reform strategies to enhance cost effective utilization of appropriate services. Such delivery system reform and payment reform strategies for insurers with greater than 10,000 covered lives shall include, but not be limited to complying with the requirements of § 4.10 of this Part. Consideration may also be given to:
- a. whether the insurer supports product offerings with simple and cost effective administrative processes for providers and consumers;
  - b. whether the insurer addresses consumer need for cost information through increasing the availability of provider cost information and promoting public conversation on trade-offs and cost effects of medical choices; and
  - c. whether the insurer allows for an appropriate contribution to surplus.

E. The following constraints on affordability efforts will be considered:

1. State and federal requirements (e.g., state mandates, federal laws).
2. Costs of medical services over which plans have limited control.
3. Health plan solvency requirements.
4. The prevailing financing system in United States (i.e., the third-party payor system) and the resulting decrease in consumer price sensitivity.

## **4.10 Affordable Health Insurance – Affordability Standards**

- A. Health Insurers with at least 10,000 covered lives under a Health Insurance plan issued, delivered, or renewed in Rhode Island shall comply with the delivery system and payment reform strategy requirements set forth in this § 4.10 of this Part. For purposes of this § 4.10 of this Part only, a Health Insurer shall not include a non-profit dental service corporation, or a non-profit optometric service corporation.
- B. Primary care spend obligation. The purpose of this § 4.10(B) of this Part is to ensure financial support for primary care providers in Rhode Island that will assist in achieving the goals of these Affordability Standards.
  - 1. Each Health Insurer's annual, actual Primary Care Expenses, including both Direct and Indirect Primary Care Expenses, shall be at least an amount calculated as 10.7 percent of its annual medical expenses for all insured lines of business. Of the Health Insurer's annual Primary Care Expense financial obligation, at least 9.7 percent of the calculated amount shall be for Direct Primary Care Expenses. Each Health Insurer's Indirect Primary Care Expenses shall include at least its proportionate share for the administrative expenses of the medical home initiative endorsed by R.I. Gen. Laws § 42-14.6, and for its proportionate share of the expenses of the health information exchange established by R.I. Gen Laws § 5-37.7.
    - b. The Commissioner may reassess the primary care spending obligations set forth in § 4.10(B)(1)(A) of this Part in order to determine whether any adjustments would better achieve the purposes of supporting primary care as an affordability strategy. The reassessment may include a determination of whether the Health Insurer's obligation to provide financial support for the health information exchange established by R.I. Gen. Laws § 5-37.7 should continue. Any adjustments proposed by the Commissioner shall be considered after soliciting comments from stakeholders, and in connection with the annual rate review process conducted by the Office. The reassessment may include a national survey of health care systems with a reputation for high performance and a commitment to primary care for the purposes of quantifying primary care spending in those systems
  - 2. Direct Primary Care Expenses shall be accounted for as medical expenses on the Health Insurer's annual financial statements, and on its RI annual health supplemental statement. Indirect Primary Care Expenses shall be accounted for as administrative costs on the Health Insurer's annual financial statements, and on its RI annual health supplemental

statement. Indirect Primary Care Expenses may be deducted from each statement's administrative cost category as cost containment expenses, in accordance with federal Medical Loss Ratio calculation rules.

3. In meeting its annual primary care spend obligations, a Health Insurer's insured covered lives shall not bear a financial burden greater than their fair share of expenses that benefit both insured covered lives, and non-insured covered lives whose health plans are administered by the Health Insurer.

C. Primary care practice transformation. The purpose of this § 4.10(C) of this Part is to transform how primary care is delivered in Rhode Island, in order that the goals of these Affordability Standards can be achieved. While primary care practice transformation should not be considered an ultimate goal in itself, the Commissioner finds that it produces higher quality and potentially lower cost care and is a necessary foundation for the effective transition of practices into Integrated Systems of Care.

1. Each Health Insurer shall take such actions as are necessary so that, no later than December 31, 2019, 80 percent of the Primary Care Practices contracting with the Health Insurer are functioning as a Patient-Centered Medical Home, as defined in § 4.3(A)(14) of this Part. Such actions shall include but not be limited to contractual incentives for practices participating in a Patient-Centered Medical Home, and contractual disincentives for practices that are not participating in such care transformation practices.
2. Care Transformation Advisory Committee
  - a. The Commissioner shall convene a Care Transformation Advisory Committee by February 28, 2015, by October 1, 2015, and by October 1 of each year thereafter. The Committee shall be charged with developing an annual care transformation plan designed to achieve the 80 percent requirement established in § 4.10(C)(1) of this Part.
  - b. The Commissioner shall designate as members of the Committee individuals or organizations that can bring value to the work of the Committee representing:
    - (1) Relevant state agencies and programs, such as the Office of the Health Insurance Commissioner, the Medicaid program, and the state employees' health benefit plan;
    - (2) Health Insurers;

- (3) Hospital systems;
    - (4) Health care providers;
    - (5) Consumers;
    - (6) Businesses; and
    - (7) Any other individual or organization that the Commissioner determines can bring value to work of the Committee.
  - c. The care transformation plan shall recommend, subject to approval by the Commissioner:
    - (1) annual care transformation targets prior to 2019,
    - (2) the specific Health Insurer activities, resources and financial supports needed by providers to achieve the targets, and
    - (3) common standards and procedures governing Health Insurer-primary care provider contractual agreements, such as, for alignment of performance measures and Health Insurer provision of information to practice. Such activities, resources, and financial support may include: the creation of community health teams to support small, independent practices with care management resources, and the deployment of practice coaches to provide technical assistance for primary care practices. The plan, together with any stakeholder comments, shall be submitted to the Commissioner on or before May 1, 2015 and before January 1 of each year thereafter. Health Insurers shall comply with the requirements of the plan approved by the Commissioner.
  - d. In the event that the Committee's stakeholders are unable to reach agreement on the plan, or in the event that the plan is inadequate for achieving the 80 percent requirement established in § 4.10(C) (1) of this Part, the Commissioner may adopt, and may require compliance by Health Insurers with a suitable plan as a condition of approval of Health Insurers' rates.
3. Health Insurers shall fund the care transformation plan approved by the Commissioner in accordance with a formula established by the Commissioner that is based upon the Health Insurer's market share and other relevant considerations. In meeting its annual financial obligation, the Health Insurer's insured covered lives shall not bear a financial burden

greater than their fair share of expenses that benefit both insured covered lives, and other covered lives whose health plans are administered by the Health Insurer. The Health Insurer's expenses in connection with the budget shall be accounted for as Direct or Indirect Primary Care Expenses, as applicable.

D. Payment reform

1. Population-based contracting. Health Insurers shall take such actions as are necessary to achieve the following population-based contracting targets:
  - a. By the end of calendar year 2015, at least 30 percent of insured covered lives shall be attributed to a Population-Based Contract that is a Shared Savings Contract, a Risk Sharing Contract, or a Global Capitation Contract.
  - b. By the end of calendar year 2016, at least 45 percent of insured covered lives shall be subject to a Population-Based Contract with at least 10 percent of insured covered lives attributed to a Population-Based Contract that is a Risk Sharing Contract, or a Global Capitation Contract.
  - c. A Health Insurer shall not enter into a Risk Sharing Contract or a Global Capitation contract unless the Health Insurer has determined, in accordance with standard operating procedures filed and approved by the Commissioner, that the provider organization entering into the contract has the operational and financial capacity and resources needed to assume clinical and financial responsibility for the provision of covered services to members attributable to the provider organization. At the reasonable request of the provider organization, the Health Insurer shall maintain the confidentiality of information which the Health Insurer requests to make its determination. The Health Insurer shall periodically review the provider organization's continuing ability to assume such responsibilities. The Health Insurer shall maintain contingency plans in the event the provider organization is unable to sustain its ability to manage its responsibilities. The foregoing shall not be construed to permit the transfer of insurance risk or the transfer of delegation of the Health Insurer's regulatory obligations.
2. Alternative payment methodologies

- a. The purpose of this § 4.10(D)(2) of this Part is to significantly reduce the use of fee-for- service payment as a payment methodology, in order to mitigate fee-for-service volume incentives which unreasonably and unnecessarily increase the overall cost of care, and to replace fee-for-service payment with alternative payment methodologies that provide incentives for better quality and more efficient delivery of health services.
- b. Health Insurers shall increase annually their use of nationally recognized, alternative payment methodology payments for hospital services, medical and surgical services, and primary care services in accordance with a schedule filed by the Health Insurer and approved or approved as modified by the Commissioner during the annual rate review process. A Health Insurer may request the Commissioner's approval of other effective alternative payment methodologies which have not been nationally recognized.
- c. The Commissioner shall convene an Alternative Payment Methodology Committee by February 28, 2015, by October 1, 2015, and by October 1 each year thereafter. The Committee shall be charged with developing a target and a target date for increasing the use of alternative payment methodologies submitted for the Commissioner's approval by May 1, 2015, and by January 1 each year thereafter, and an annual alternative payment methodology plan for achieving the target. The Committee that convenes on October 1, 2015 shall be tasked with developing an alternative payment plan that specifically addresses medical and surgical specialty professional providers.
- d. The Commissioner shall designate as members of the Committee individuals or organizations representing:
  - (1) Relevant state agencies and programs, such as the Office of the Health Insurance Commissioner, the Medicaid program, and the state employees' health benefit plan;
  - (2) Health Insurers;
  - (3) Hospital systems;
  - (4) Health care providers;
  - (5) Consumers;
  - (6) Businesses; and



- (7) Any other individual or organization that the Commissioner determines can bring value to work of the Committee.
- e. The alternative payment methodology plan shall recommend subject to approval by the Commissioner:
  - (1) annual targets prior to achieving the ultimate target, and
  - (2) the type of payments that should be considered alternative methodology payments (such as bundled payments, prospective payments, and pay-for-performance payments). The plan, together with any stakeholder comments, shall be submitted to the Commissioner on or before May 1st of each year. Health Insurer shall comply with the requirements of the plan approved by the Commissioner.
- f. In the event that the Committee's stakeholders are unable to reach agreement on the plan, or in the event that the plan is inadequate for implementing the schedule approved in § 4.10(D)(2)(b) of this Part, the Commissioner may require adoption of a suitable plan as a condition of approval of Health Insurers' rates.

### 3. Measure alignment

- a. The purpose of this § 4.10(D)(3) of this Part is to ensure consistency in the use of quality measures in contracts between Health Insurers and health care providers in Rhode Island, to reduce the administrative burden placed on providers by the unaligned use of quality measures across payers, to improve the quality of care by channeling clinical focus on core areas of health care delivery, to formally adopt Aligned Measure Sets to be used in contracts between Health Insurers and health care providers in Rhode Island, and to articulate a process for annually refining and updating the Aligned Measure Sets.
- b. § 4.10(D)(3) of this Part applies to contracts between health care providers, including primary care providers, specialists, hospitals, and Integrated Systems of Care and a Health Insurer which incorporate quality measures into the payment terms of the contract and which are entered into after July 1, 2017, or expire after July 1, 2017, or which would expire after July 1, 2017 but for the amendment or renewal of the contract (whether the renewal is effective pursuant to the terms of a previously executed contract, or otherwise).

- c. Health Insurers shall adopt the Aligned Measure Sets for primary care, hospitals, and Accountable Care Organizations (ACOs, otherwise known as Integrated Systems of Care as defined in Section 3(l) of this regulation) and any other Aligned Measure Set developed pursuant to this § 4.10(D)(3) of this Part.
  - (1) Health care provider contracts which incorporate quality measures into the payment terms shall include all measures designated as Core Measures in an Aligned Measure Set.
  - (2) Health care provider contracts which incorporate quality measures into the payment terms shall not include any measures beyond those designated as Core Measures in an Aligned Measure Set, with the exception of designated Menu Measures. Menu Measures may be incorporated into the payment terms of the contract at the mutual agreement of the Health Insurer and contracted health care provider.
  - (3) In the event than an Aligned Measure Set does not include any Core Measures, Health Insurers shall limit selection of measures to Menu Measures.
- d. The Commissioner shall convene a Quality Measure Alignment and Review Committee (Committee) by August 1 each year. The Committee shall be charged with developing a plan, for consideration by the Commissioner, that:
  - (1) Proposes modifications, if necessary, to existing Aligned Measure Sets to be used in contracts between Health Insurers and health care providers in Rhode Island.
  - (2) Proposes measures as Core Measures and Menu Measures.
  - (3) Proposes a work plan for the development of Aligned Measure Sets for additional professional health care provider specialties as determined necessary by the Commissioner.
- e. The Commissioner shall designate as members of the Committee individuals or organizations representing:
  - (1) relevant state agencies and programs, including the Office, the Medicaid program, the Rhode Island Department of Health, and the Department of Behavioral Health, Developmental Disabilities and Hospitals;

- (2) Health Insurers;
- (3) Hospital systems;
- (4) Health care providers;
- (5) Consumers;
- (6) Quality measure experts; and/or
- (7) Any other individual or organization that the Commissioner determines can bring value to the work of the Committee.

- f. The plan, together with any stakeholder comments, shall be submitted to the Commissioner on or before October 1 of each year. Health Insurers shall comply with the requirements of the plan adopted by the Commissioner.
- g. The Commissioner shall maintain the Aligned Measure Sets and publish them, along with any supporting documentation, on the OHIC website.

#### 4. Hospital contracts

- a. Each Health Insurer shall include in its hospital contracts the terms required by § 4.10(D)(4) of this Part.
- b. This § 4.10(D)(4) of this Part shall apply to contracts between a Health Insurer and a hospital licensed in Rhode Island which are entered into, or which expire after January 1, 2017, or which would expire but for the amendment or renewal of the contract (whether the renewal is effective pursuant to the terms of a previously executed contract, or otherwise).
- c. Hospital contracts shall utilize unit-of-service payment methodologies for both inpatient and outpatient services that realign payment to provide incentives for efficient use of health services, and are derived from nationally utilized payment practices other than fee-for-service. Nothing in this requirement prevents contract terms that provide additional or stronger payment incentives toward quality and efficiency such as performance bonuses, bundled payments, global payments, or case rates.
- d. Hospital contracts shall include a quality incentive program.

- (1) The quality incentive program shall include payment for attaining or exceeding mutually agreed-to, sufficiently challenging performance levels for all Core Measures within Aligned Measure Set for hospitals. For measures beyond the Core Measures the Health Insurer shall limit selection of measures to those listed as Menu Measures in the Aligned Measures Set for hospitals.
  - (2) The measures, performance levels, payment levels, and payment mechanisms must be articulated in the contract.
  - (3) Incentive payments will not be due and payable until the quality incentive measure targets have been met or otherwise achieved by the hospital. A Health Insurer may take interim payments in the event that interim quality performance targets have been met; provided that the interim payments must be commensurate with the achievement of the interim targets; and provided further that if the annual quality performance targets have not been achieved, the hospital shall be required to remit unearned interim payments back to the Health Insurer.
- e. Hospital contracts shall include a provision that agrees on rates, and quality incentive payments for each contract year, such that review and prior approval by the Office of the Health Insurance Commissioner shall be required if either:
- (1) The average rate increase, including estimated quality incentive payments, is greater than the US All Urban Consumer All Items Less Food and Energy CPI ("CPI-Urban") percentage increase (determined by the Commissioner by October 1 each year, based on the most recently published United States Department of Labor data). Such percentage increase shall be plus 1%, or
  - (2) Less than 50% of the average rate increase is for expected quality incentive payments.
- f. Hospital contracts shall include terms that define the parties' mutual obligations for greater administrative efficiencies, such as improvements in claims and eligibility verification processes, and identify commitments on the part of each, and that require the parties to actively participate in the Commissioner's Administrative Simplification Work Group.

- g. Hospital contracts shall include terms that relinquish the right of either party to contest the public release, by state officials or the parties to the contract of the provisions of the contract demonstrating compliance with the requirements of this § 4.10(D)(4) of this Part; provided that the Health Insurer or other affected party may request the Commissioner to maintain specific contract terms or portions thereof as confidential, if properly supported with legal and factual analysis justifying the claim of confidentiality.

5. Population-based contracts

- a. This § 4.10(D)(5) applies to Population-Based Contracts between an Integrated System of Care and a Health Insurer which are entered into after July 1, 2015, or expire after July 1, 2015, or which would expire after July 1, 2015 but for the amendment or renewal of the contract (whether the renewal is effective pursuant to the terms of a previously executed contract, or otherwise). Each Health Insurer shall comply with the requirements of this § 4.10(D)(5) of this Part.
- b. Population-Based Contracts shall include a provision that agrees on a budget for each contract year, such that review and prior approval by the Office of the Health Insurance Commissioner shall be required if any annual increase in the total cost of care for services reimbursed under the contract, after risk adjustment, exceeds the US All Urban Consumer All Items Less Food and Energy CPI ("CPI-Urban") percentage increase (determined by the Commissioner as soon as practicable for calendar year 2015 and by October 1 of each year, based on the most recently published United States Department of Labor data). Such percentage increase shall be plus 3.5% during calendar year 2015, plus 3.0% during calendar year 2016, plus 2.5% during calendar year 2017, plus 2.0% during calendar year 2018, and plus 1.5% after calendar year 2018.
- c. Population-Based Contracts shall include terms that relinquish the right of any party to contest the public release, by state officials or the parties to the contract, of the provisions of the contract demonstrating compliance with the requirements of § 4.10(D)(5) of this Part; provided that the Health Insurer or other affected party may request the Commissioner to maintain specific contract terms or portions thereof as confidential, if properly supported with legal and factual analysis justifying the claim of confidentiality.

6. Nothing in § 4.10(D)(4)(5) of this Part is intended to require that the Health Insurer must contract with all hospitals and providers licensed in Rhode Island. Consistent with statutes administered by the Department of Health, Health Insurers must demonstrate the adequacy of their hospital and provider network.

E. Waiver and modification

1. The Commissioner, upon petition by a Health Insurer for good cause shown, or in his or her discretion as necessary to carry out the purposes of the laws and regulations administered by the Office, may modify or waive one or more of the requirements of this Section. Any such modifications shall be considered and made during the formal process of the Commissioner's review and approval of health insurance rates filed by the Health Insurer.
2. Comment and accountability
  - a. On or before January 1 of each year the Commissioner shall solicit comments from stakeholders, and issue formal guidance concerning whether the population-based contracting targets established in §§ 4.10(D)(1)(a) through (c) of this Part, the population-based contract budget limits established in § 4.10(D)(5)(b) of this Part, the care transformation requirements established in § 4.10(C)(1) of this Part, or the alternative payment requirements established in § 4.10(D)(2)(b) of this Part should be modified:
    - (1) To create or maintain an effective incentive for hospitals and providers to participate in care transformation, population-based contracts and alternative payment arrangements; or
    - (2) To account for unanticipated and profound macroeconomic events, or similarly significant changes in systemic utilization or costs that are beyond the ability of the Health Insurer to control, such that application of the budget limit would be manifestly unfair.
  - b. A Health Insurer shall not be held accountable for a violation of the population-based contracting targets established in §§ 4.10(D)(1)(a) through (c) of this Part, the population-based budget limit established in § 4.10(D)(5)(b) of this Part, the care transformation requirements established in § 4.10(C)(1) of this Part, or the alternative payment requirements established in § 4.10(D)(2)(b) of this Part if the Health Insurer demonstrates to the satisfaction of the

Commissioner that compliance with any of these requirements was not possible, notwithstanding the Health Insurer's good faith and reasonable efforts. The Health Insurer shall notify the Commissioner and request a waiver under § 4.10(E)(1) of this Part, if desired, as soon as any such circumstances arise.

F. Data collection and evaluation

1. On or before 15 days following the end of each quarter, each Health Insurer shall submit to the Commissioner, in a format approved by the Commissioner, a Primary Care Spend Report, a Care Transformation Report, and a Payment Reform Report, including such data as is necessary to monitor and evaluate the provisions of this Section. The Care Transformation Report shall include data measuring the integration of behavioral health care into Patient-Centered Medical Homes and other provider practices, and measuring the impact of such integration on health care quality and cost.
2. On or before October 1 and annually thereafter, the Office shall present to the Health Insurance Advisory Council a monitoring report describing the status of progress in implementing the Affordability Standards.
3. During calendar year 2018, the Office shall conduct a comprehensive evaluation of the Affordability Standards, together with recommendations for achieving the health care quality and affordability goals of the Office. Following completion of the comprehensive evaluation, the Commissioner shall request the Health Insurance Advisory Council to review the evaluation and make recommendations to the Commissioner for any revisions to the Affordability Standards.
4. Health Insurers shall provide to the Office, in a timely manner and in the format requested by the Commissioner, such data as the Commissioner determines is necessary to evaluate the Affordability Standards, to monitor compliance with the Affordability Standards established in this § 4.10 of this Part, and to evaluate and monitor the activities necessary to implement the State Innovation Models Grant, which has been awarded to Rhode Island by the federal Centers for Medicare and Medicaid Services. Such data may include any hospital or provider reimbursement contract, and any data relating to a hospital's attainment of quality and other performance-based measures as specified in quality incentive programs referenced in §§ 4.10(D)(4)(d) and (e) of this Part.

5. To the extent possible, the Office shall use the All Payer Claims Database authorized by R.I. Gen. Laws § 23-17.17 to collect data required by this subsection.

#### **4.11 Administrative Simplification**

##### **A. Administrative Simplification Task Force**

1. An Administrative Simplification Task Force is established to make recommendations to the Commissioner for streamlining health care administration so as to be more cost-effective, and less time-consuming for hospitals, providers, consumers, and insurers, and to carry out the purposes of R.I. Gen. Laws § 42-14.5-3(h). The Commissioner shall appoint as members of the Task Force representatives of hospitals, physician practices, community behavioral health organizations, each health insurer, consumers, businesses, and other affected entities, as necessary and relevant to the issues and work of the Task Force. The Task force shall also include at least one designee each from the Rhode Island Medical Society, Rhode Island Council of Community Mental Health Organizations, the Rhode Island Health Center Association, and the Hospital Association of Rhode Island. The Chair or Co-Chairs of the Task Force shall be selected annually by its members.
2. At the discretion of, and as directed by the Commissioner, the Task Force shall convene to consider issues of streamlining health care administration. Members of the Task Force may propose and substantiate such issues for review and inclusion in a work plan, together with such data and analysis that demonstrates the need to address the issue. The Task Force will meet during September, October and November to make its recommendations to the Commissioner for resolving issues identified in the work plan no later than December 31 of each year. If the Task Force agrees on recommendations for resolving the identified issues, those recommendations will be submitted to the Commissioner for her or his consideration. If the Task Force cannot agree on recommendations, a report will be submitted to the Commissioner on the Task Force's activities, together with comments by members concerning the identified issues. The Commissioner shall consider the report of the Task Force, and may adopt such regulations as are necessary to carry out the purposes of this section, and the purposes of R.I. Gen. Laws § 42-14.5-3(h).

##### **B. Retroactive terminations**



1. The purpose of this Subsection is to reduce administrative burdens as well as the associated costs in connection with the practice of retroactive terminations, create an incentive for efficiencies among stakeholders for timeliness of notices of termination, and establish an equitable balance of financial liability among health insurers, employers and enrollees in light of the unavailability of real time, accurate eligibility information.
2. Health Insurers shall cease the administrative process of seeking recoupment of payment from providers in the case of retroactive terminations of an enrollee, except when verified by the Health Insurer that the enrollee is covered by another Health Insurer for the service provided during the retroactivity period. For purposes of this Subsection, the term Health Insurer includes state and federal government programs, a self-insured benefit plan, and an entity providing COBRA coverage.
3. Health insurers may include the reasonable cost of retroactive terminations into their filed rates. Health insurers shall establish reasonable policies and procedures for providers to conduct eligibility checks at the time services are provided. If the health issuer requires by administrative policy or provider contract that the eligibility check is a prerequisite to the application of the provisions of this subsection, the Health Insurer must also provide an administratively simple mechanism, approved by the Commissioner, for the provider to document that eligibility was checked by the provider at the time of service. In addition, Health Insurers may include reasonable adjustments attributable to the Insurer's financial burden with respect to retroactive terminations with its employer groups, so long as the process does not include recoupment of payments from providers not permitted under this § 4.11(B) of this Part in the event of retroactive termination.

C. Coordination of benefits

1. The purpose of this Subsection is to improve on the accuracy and timeliness of information when an enrollee is covered by more than one Health Insurer, and to communicate to affected parties which Insurer's coverage is primary.
2. Health Insurers shall:
  - a. accept a common coordination of benefits ("COB") form approved by the Commissioner;

- b. submit to the Commissioner for approval a procedure to inform contracted providers of a manual and electronic use of the common COB form in provider settings;
  - c. not alter the common COB form, except for use internally by the Insurer, or on the Insurer's website, and in these excepted instances only the Insurer's name and contact information may be added to the form;
  - d. accept the common COB form submitted by the provider on behalf of patient; and
  - e. no later than January 1, 2016 include a flag within the insurance eligibility look-up section of its website indicating the most recent information available to the Insurer on additional coverage by another Health Insurer, the last update of an enrollee's COB information. Health Insurers may continue to use their own COB form as part of an annual member survey.
- 3. Health insurers shall participate in a centralized registry for coverage information designated by the Commissioner. If the Centers for Medicare and Medicaid Services designates a centralized registry, Health Insurers shall participate in the CMS-designated registry no later than one calendar year from the date of use of the designated registry by Medicare, unless such deadline is extended by the Commissioner.
  - 4. Health insurers shall establish written standards and procedures to notify providers of all eligibility determinations electronically and telephonic at the time eligibility determination is requested by the provider.

D. Appeals of "timely filing" denials

- 1. This Subsection is intended to permit a provider to appeal the denial of a claim for failure to file the claim within the time period provided for in the participation agreement when the provider exercised due diligence in submitting the claim in a timely manner, or when the claim is filed late due to no fault of the provider.
- 2. Health insurers shall accept a provider appeal of a denial for failure to meet timely claim filing requirements so long as the claim is submitted to the correct Health Insurer within 180 days of the date of receipt by the provider of a denial from the initial, incorrect Health Insurer, provided that the initial claim was submitted to the incorrect Health Insurer within 180 days of the date of service.

3. Health Insurers shall not deny the appeal of a claim based on failure to meet timely filing requirements in the event that the provider submits all of the following documentation:
  - a. A copy of the timely filing denial;
  - b. Written documentation that the provider billed another Health Insurer or the patient within at least 180 days of the date of service;
  - c. If the provider billed another Health Insurer, an electronic remittance advice, explanation of benefits or other communication from the plan confirming the claim was denied and not paid, or inappropriate payment was returned;
  - d. If the provider billed the patient, acceptable documentation may include:
    - (1) benefit determination documents from another carrier,
    - (2) a copy of provider's billing system information documenting proof of an original carrier claim submission,
    - (3) a patient billing statement that includes initial claim send date and the date of service, or
    - (4) documentation as to the exact date the provider was notified of member's correct coverage, who notified the provider, how the provider was notified and a brief, reasonable statement as to why the provider did not initially know the patient was not covered by carrier. Practice management and billing system information can be used as supportive documentation for these purposes.
4. Health Insurers shall notify providers that upon submission of the information required by § 4.11(D)(3) of this Part the Health Insurer shall not deny the appeal of a claim due to the failure to file the claim in a timely manner. Nothing in this Subsection precludes the denial of a claim for other reasons unrelated to the timeliness of filing the claim.
  - a. Health insurers shall utilize a standardized appeal checklist approved by the Commissioner when informing providers of a timely filing denial and what needs to be submitted to appeal that denial. The checklist and appeal submissions shall be made available for both manual and electronic processing.

- b. Health Insurers may implement the requirements of this Subsection either by amendments to their claims processing system, or by amendments to their provider appeal policies and procedures.

E. Medical records management

1. The purpose of this Subsection is to maintain the confidentiality of patient information during the process of transmittal of medical records between providers and health insurers, and to reduce the administrative burden of both the providers and carriers with regard to medical record submissions.
2. Health insurers shall comply with all state and federal laws and regulations relating to requests for written clinical and medical record information from patients or providers.
3. Health insurer requests for medical records shall specify:
  - a. What medical record information is being requested;
  - b. Why the medical record information being requested meets 'need to know' requirements under The Privacy and Individually Identifiable Health Information, 45 C.F.R. § 164.500-534 (2013); and
  - c. Where the medical record is to be sent via mailing addresses, fax or electronically.
4. Health Insurers shall establish a mechanism to provide for verification of the receipt of the medical records when a provider requests such verification.
5. Upon a provider's request, the Health Insurer disclose when a medical record was mis-sent or mis-addressed. In such events the Health Insurer shall destroy the mis-sent or mis-addressed records.
6. Upon a provider's request, Health Insurers shall provide:
  - a. a clear listing of contact information (including mailing address, telephone number, fax number or email address) as to where medical records are to be sent,
  - b. what specific records are to be sent, and
  - c. why the records are needed and permitted to be used in accordance with 45 C.F.R. § 164.500-534.

## 4.12 Price Disclosure

- A. The purpose of this Section is to empower consumers who are enrollees in a health insurance plan to make cost effective decisions concerning their health care, and to enable providers to make cost-effective treatment decisions on behalf of their patients who are enrollees of a health insurance plan, including referral and care coordination decisions.
- B. A Health Insurer shall not enforce a provision in any participating provider agreement which purports to obligate the Health Insurer or health care provider to keep confidential price information requested by a health care provider for the purpose of making cost-effective clinical referrals, and for the purpose of making other care coordination or treatment decisions on behalf of their patients who are enrollees in the health benefit plan of the Health Insurer.
- C. At the request of a health care provider acting on behalf of an enrollee-patient, a Health Insurer shall disclose in a timely manner to the health care provider such price information as the provider determines is necessary to make cost-effective treatment decisions on behalf of their patients, including clinical referrals, care coordination, and other treatment decisions.
- D. A Health Insurer may adopt reasonable policies and procedures designed to limit the disclosure of price information for unauthorized purposes.
- E. Each Health Insurer shall file for the Commissioner's approval its Comprehensive Price Transparency Plan. A Comprehensive Price Transparency Plan shall empower consumers and health care providers to make informed and cost-effective health care decisions with respect to the Health Insurer's network of participating providers, facilities and vendors. The Plan shall:
  - 1. Identify the health care services, products and supplies subject to price disclosure under the Plan, including but not limited to hospital in-patient and out-patient services, physician services, other health care provider services, medical imaging services, laboratory services, prescription drug prices, durable medical equipment, and medical supplies;
  - 2. Identify the health services, products and supplies, if any, that are not subject to price disclosure under the Plan, a reasonable basis for not including those services, products and supplies within the Plan, and a time table for including those services, products and supplies in the Plan; and
  - 3. Disclose price information with respect to services reimbursed on a fee-for service basis, as well as services reimbursed by alternative reimbursement mechanisms.

#### **4.13 Severability**

If any section, term, or provision of this regulation is adjudged invalid for any reason, that judgment shall not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

#### **4.14 Construction**

- A. This regulation shall be liberally construed to give full effect to the purposes stated in R.I. Gen. Laws § 42-14.5-2.
- B. This regulation shall not be interpreted to limit the powers granted the Commissioner by other provisions of the law.

**230-RICR-20-30-4**

**TITLE 230 - DEPARTMENT OF BUSINESS REGULATION  
(INCLUDES THE OFFICE OF THE HEALTH INSURANCE  
COMMISSIONER)**

**CHAPTER 20 - INSURANCE**

**SUBCHAPTER 30 - HEALTH INSURANCE**

**PART 4 - Powers and Duties of the Office of the Health Insurance Commissioner  
(230-RICR-20-30-4)**

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