



Health Insurance Bulletin 2020-02

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Effective Immediately

Affordability Standards Regulatory Flexibilities to Address Provider Financial and Operational Stability During the COVID-19 State of Emergency

In light of the significant and unanticipated epidemiological and macroeconomic events caused by the novel coronavirus disease (COVID-19), the Office of the Health Insurance Commissioner (OHIC) is issuing the following guidance to commercial health insurers regarding regulatory flexibility under 230-RICR-20-30-4, *Powers and Duties of the Office of the Health Insurance Commissioner*, including the Affordability Standards.

The Present Situation

Rhode Island's professional providers and hospitals face increasing financial and operational challenges due to the service disruptions and unanticipated resource demands caused by the COVID-19 pandemic.

The Affordability Standards, as set forth in Sections 4.9 and 4.10 of 230-RICR-20-30-4 promote value-based payment and accountable care as contracting strategies and delivery system models to advance the public's interest in access, affordability, and quality health care. Value-based payment and accountable care take many forms, including the management of the total cost and quality of care provided to health plan members who are attributed to Integrated Systems of Care (otherwise known as Accountable Care Organizations (ACOs)), provider contracting based on quality performance, as well as other value-based contracting methods. In many instances, commercial health insurers are required by OHIC regulations to maintain value-based contracts with providers. These contracts place a significant amount of provider revenue at risk for performance on key measures of cost and quality. COVID-19-related disruptions to utilization patterns will impact performance relative to total cost of care budgets and some clinical quality measures in use for 2020.

In response to the COVID-19 pandemic, and specifically to address provider financial and operational challenges resulting from reduced utilization of services and increased resource demands, OHIC deems a temporary suspension of certain health insurer regulatory requirements as a prudent measure to support delivery system capacity. To that end, this bulletin identifies several temporary variances that health insurers may take from regulatory requirements under the Affordability Standards. These variances are intended to grant health insurers flexibility to hold providers harmless for aberrations in cost and quality performance due to COVID-19.

The regulatory variances set forth in this bulletin shall extend through the duration of the COVID-19 State of Emergency, or for an alternative time period deemed prudent by the



Commissioner in consultation with the health insurers. Health insurers will not need to seek a waiver from the Commissioner to employ the variances identified in this bulletin. However, health insurers shall report to the Commissioner which variances are employed and identify the provider contracts to which they apply within 30 days of adoption. Such information shall be granted confidential treatment by OHIC.

OHIC is committed to the pursuit of its statutory mission and will continue to require value-based contracting and accountable care strategies into the future.

Hospital Contracts - 230-RICR-20-30-4.10(D)(4)

Section 4.10(D)(4) requires health insurers to include terms in their contracts with hospitals that limit annual fee schedule increases and tie at least half of annual fee schedule increases to quality performance.

OHIC expects health insurers to take necessary actions to stabilize hospital operational capacity during the COVID-19 State of Emergency to ensure member access to covered services to which their members are entitled, pursuant to their health benefit plans.

- Health insurers may temporarily increase fee schedules for hospital inpatient and outpatient services, subject to the limitation that the temporary increase shall not become part of base payment rates after the expiration of the COVID-19 State of Emergency, or an alternative time period specified by the Commissioner in consultation with the health insurers.
- Health insurers are strongly encouraged to waive hospital quality performance requirements for the 2020 performance period to guarantee that Rhode Island's hospitals achieve the full value of fee schedule increases that are presently contingent on quality performance.

Population-based Contracts – 230-RICR-20-30-4 - § 4.10(D)(2) & § 4.10(D)(5)

Section 4.10(D)(5) governs population-based contracts between commercial health insurers and Integrated Systems of Care (otherwise referred to as Accountable Care Organizations (ACOs)). This section requires that annual population-based contract budget increases are subject to an overall cap defined by OHIC annually. Furthermore, annual iterations of the Commissioner's Alternative Payment Methodology Plans developed pursuant to Section 4.10(D)(2) require health insurers to meet annual targets for the use of alternative payment models (APMs) with their network providers and meet targets for population-based contracts with downside risk.

OHIC expects health insurers to take necessary actions to ensure that value-based contracts with Integrated Systems of Care do not impose burdens that will harm the short-term ability of providers to address covered members' health care needs during the COVID-19 pandemic. Furthermore, OHIC expects health insurers to take necessary actions to preserve provider engagement in population-based contracts and accountable care delivery models into the future.



- OHIC recognizes that 2020 claims experience may yield aberrant performance results under shared savings and shared risk contracts. Furthermore, baseline per member per month costs and performance year targets for 2021, if not longer, will likely be affected by the COVID-19 pandemic.
- OHIC expects health insurers and Integrated Systems of Care to mutually agree to a reasonable methodology to account for 2020 experience in the computation of baseline expenditures and performance targets for 2021 and beyond. OHIC will reassess the budget limitation for population-based contracts in light of the COVID-19 pandemic and issue guidance in the coming months.
- Health insurers are expected to continue to fund Integrated Systems of Care for care management and other population health management costs pursuant to existing contracts.
- Health insurers may waive quality performance requirements under population-based contracts for the 2020 performance period.
- At the mutual agreement of the health insurer and Integrated System of Care, shared savings and shared risk incentives may be suspended for the 2020 performance period.
- In the event that a health insurer and Integrated System of Care mutually agree to suspend shared savings or shared risk incentives for 2020, the health insurer shall not be held accountable for violations of the annual alternative payment methodology targets and risk-based contracting requirements for 2020. Health insurers shall still be required to report compliance data to OHIC but may request favorable extensions from existing reporting deadlines.

The COVID-19 pandemic has laid bare additional shortcomings of fee-for-service reimbursement for our health care system. Considering experience from the COVID-19 pandemic, health insurers and providers are strongly encouraged to pursue the development and implementation of prospective payment arrangements at a greater pace and scale in the future. This includes primary care capitation and hospital global budgets.

- In anticipation of forthcoming rulemaking on this issue OHIC expects health insurers to make reasonable accommodations for primary care practices seeking to enter into prospective payment models for primary care services.

Other Value-based Contracts

With respect to other value-based provider contracts not captured in the forgoing sections, health insurers are strongly encouraged to review the impact of COVID-19 on provider financial and operational capacity and quality performance and to consider waiving quality performance requirements for 2020.

Primary Care Spending Requirements

The COVID-19 pandemic has the potential to cause structural breaks in the usual progression of total primary care payments and total medical payments. At this time, OHIC is not prepared to waive the primary care spending requirement. The State's primary care providers are at the



center of the fight against COVID-19. OHIC will track the data throughout the year and revisit this issue in the fall of 2020.

Dated at Cranston, Rhode Island this 10th day of April 2020.

Marie Ganim

Marie Ganim, PhD., Commissioner