

230-RICR-20-30-4

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, and 42-14-17.

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” means the same 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 (1) or more intermediaries controls, or is controlled by, or is under common control with, the entity or person specified.

2. "Aligned measure set" means any set of quality measures adopted by the Commissioner pursuant to § 4.10(D)(5) 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" means 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 Chapter 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" means the same as set out in R.I. Gen. Laws § 27-13.1-1 *et seq.*
7. "Health insurance" means "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” means the same 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 Chapter 42-14.6, and for the health information exchange established by R.I. Gen. Laws Chapter 5-37.7.
 12. “Integrated system of care,” sometimes referred to as an Accountable Care Organization, means one (1) 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. “Low-value care” most often refers to medical services, including tests and procedures, that should not be performed given their potential for harm or the existence of comparably effective and often less expensive alternatives.
14. “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.
15. “Minimum loss rate,” means a defined percentage of the total cost of care, or annual provider revenue from the insurer under a population-based contract, which must be met or exceeded before actual losses are incurred by the provider. Losses may accrue on a “first dollar” basis once the “minimum loss rate” is breached.
16. “Patient-centered medical home” means:
 - a. A Primary Care Practice recognized by the collaborative initiative endorsed by R.I. Gen. Laws Chapter 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 Chapter 42-14.6, and
 - d. A Primary Care Practice which has demonstrated development and implementation of meaningful cost management strategies and clinical quality performance attainment and/or improvement. The requirements for meaningful cost management strategies and for clinical quality performance attainment and/or improvement, and the measures for assessing performance, shall be determined annually by the Commissioner.
17. “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 Part. 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.

18. "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, Geriatrics, 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.
19. "Qualifying Integrated Behavioral Health Primary Care Practice" means:
 - a. A patient-centered medical home practice that is recognized by a national accreditation body (such as NCQA) as an integrated behavioral health practice, or
 - b. A patient-centered medical home practice that participated in and successfully completed, or is currently participating in, an integrated behavioral health program under the oversight of the collaborative initiative endorsed by R.I. Gen. Laws Chapter 42-14.6. Such practices must be recognized as an integrated behavioral health practice by a national accreditation body (such as NCQA) within three (3) years, or
 - c. A patient centered-medical home practice that completes a qualifying behavioral health integration self-assessment tool approved by the Commissioner and develops an action plan for improving its level of integration. Such practices must be recognized as an integrated behavioral health practice by a national accreditation body (such as NCQA) within three (3) years.

20. “Risk exposure cap” means a cap on the losses which may be incurred by the provider under the contract, expressed as a percentage of the total cost of care or the annual provider revenue from the insurer under the population-based contract.
21. “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.
22. “Risk sharing rate” means the percentage of total losses shared by the provider with the insurer under the contract after the application of any minimum loss rate.
23. “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 one of the circumstances in §§ 4.5(B)(1) through (4) of this Part exist, 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.
 - 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.
- 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 (2) 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 (12) 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 (50%) 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 one (1) of the circumstances in §§ 4.6(C)(1) through (3) of this Part exist, 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.
 - 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.
- 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 (2) 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. 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;
 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 any of the circumstances in §§ 4.7(C)(1) through (4) of this Part exist, 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.
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.
- 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 insurers, which can result in benefits such as innovation, and collaboration, which can promote consumer and provider benefits such as standardization and simplification.
- C. Whenever the Commissioner determines that any of the circumstances listed in §§ 4.8(C)(1) or (2) of this Part exist, 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.

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.
- 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 (2) 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 § 4.9 of this Part;
 - 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. Improved integration of behavioral health services into the primary care delivery system to meet the physical and behavioral health needs of the public.
 3. Reduced incidence of hospitalizations for ambulatory care-sensitive conditions, and of re-hospitalizations.
 4. Reduced incidence of emergency room visits for ambulatory care-sensitive conditions.
 5. Reduced provision of low-value care.
 6. 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, integrated behavioral health 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 may in some instances result in better outcomes and should not be discouraged; 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 ten thousand (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 insurer 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 ten thousand (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 § 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% 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% 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 Chapter 42-14.6, and for its proportionate share of the expenses of the health information exchange established by R.I. Gen. Laws Chapter 5-37.7.
 2. Direct Primary Care Expenses shall be accounted for as medical expenses on the health insurer's annual financial statements. Indirect Primary Care Expenses shall be accounted for as administrative costs on the health insurer's annual financial statements. Indirect Primary Care Expenses may be deducted from the 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 spending 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 § 4.10(C) of this Part is to transform how primary care is delivered in Rhode Island and to ensure

sustainable funding for advanced primary care, 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 participation of practices in Integrated Systems of Care. One element of primary care transformation is the integration of behavioral health care into primary care practice. Integration is in the best interest of the public as it improves health status for those with behavioral health needs and may also result in more efficient use of health care resources. Further, behavioral health integration is a necessary and proper strategy to fulfill the Office's legislative mandate under R.I. Gen. Laws § 42-14.5-3, which directs insurers toward policies and practices that address the behavioral health needs of the public and greater integration of physical and behavioral health care delivery.

1. Primary Care Practice Transformation & Patient Centered Medical Home Financial Support Model.
 - a. Primary care practices which meet the requirements of a Patient-Centered Medical Home in § 4.3(A)(15) of this Part shall be deemed eligible for practice support payments.
 - b. Health insurers shall fund primary care practices which have met the requirements of a Patient-Centered Medical Home in § 4.3(A)(15) of this Part in accordance with the following guidelines:
 - (1) Primary care practices actively engaged in first-time transformation activity and without NCQA recognition, or practices with NCQA recognition, but which have not met the requirements outlined in § 4.3(A)(15)(d) of this Part, shall receive both infrastructure and care management per member per month (PMPM) payments. The care management PMPM payment shall support development and maintenance of a care management function within the practice site.
 - (2) Primary care practices with NCQA recognition and which have met the requirements in § 4.3(A)(15) of this Part shall receive a care management PMPM payment and have an opportunity to earn a performance bonus.
 - (3) Health insurers shall not impose a minimum attribution threshold for making care management PMPM or

infrastructure payments to a Patient Centered Medical Home.

- (4) The monetary levels of practice support payments shall be independently determined by the health insurer and the primary care practices. If the primary care practice is part of an Integrated System of Care, the health insurer may make the PMPM payment to the Integrated System of Care, provided the Integrated System of Care is contractually obligated to use the PMPM payment to finance care management services at the primary care practice earning the payment.

2. Behavioral Health Care Integration. The goal of this § 4.10(C)(2) of this Part is to improve the efficiency, quality, and accessibility of behavioral health care in primary care settings. Behavioral health care is an important dimension of Rhode Island's health care system and refers to services for mental health and substance use diagnosis and treatment. In order to reach the goal of affordability and access through a well-integrated health care delivery system, the Commissioner finds that specific health insurer actions are required to support the integration of behavioral health care into primary care settings.

- a. Health insurers shall take such actions as necessary to decrease administrative barriers to patient access to integrated services in primary care practices by doing the following:
 - (1) Financial barriers. By January 1, 2021 health insurers shall eliminate copayments for patients who have a behavioral health visit with an in-network behavioral health provider on the same day and in the same location as a primary care visit at a Qualifying Integrated Behavioral Health Primary Care Practice as defined in § 4.3(A)(19) of this Part.
 - (2) Billing and Coding Policies. Health insurers shall adopt policies for Health and Behavior Assessment/Intervention (HABI) codes that are no more restrictive than Current Procedural Terminology (CPT) Coding Guidelines for HABI codes.
 - (3) Out-of-pocket costs for Behavioral Health Screening. Health insurers shall adopt policies for the most common preventive behavioral health screenings in primary care that are no more restrictive than current applicable federal law and

regulations for preventive services. For administrative simplification purposes, the Commissioner shall issue interpretive guidance on strategies to align screening codes across health insurers and publish them, along with any supporting documentation, on the OHIC website.

- b. The Commissioner shall determine which practices are Qualifying Integrated Behavioral Health Primary Care Practices by November 30, 2020, and annually thereafter. The Commissioner shall issue guidelines on any time limitations for practices to qualify under §§ 4.3(A)(19)(a) and (b) of this Part.
- c. Health insurers shall submit a report to the Commissioner no later than October 31, 2020, that delineates strategies, in addition to the requirements in § 4.10(D)(3)(c) of this Part, to facilitate and support the integration of behavioral health care into the primary care setting. The Commissioner shall issue documentation no later than August 1, 2020 that includes specific questions for the health insurers to respond to and any additional requirements for the report. The Commissioner shall post the completed reports on the OHIC website.

D. Payment reform. The purpose of this § 4.10(D) of this Part is to improve the affordability and quality of health care through the implementation of alternative payment models. Alternative payment models are provider contracting practices that are designed to align provider financial incentives with the efficient use of health care resources and encourage the proactive management of the health needs of their patient populations. Furthermore, the Commissioner finds that provider contracting practices that incentivize the efficient use of health care resources and which invest in the capacity of health care providers to manage population health are essential to support the care transformation agenda articulated in § 4.10(C) of this Part and to meet OHIC's legislative mandate to direct health insurers toward policies and practices that address the behavioral health needs of the public and greater integration of physical and behavioral health care delivery.

1. Alternative payment models

- a. It is in the interest of the public 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 models that provide

incentives for better quality and more efficient delivery of health services.

- b. Health insurers shall take such actions as necessary to have fifty percent (50%) of insured medical payments made through an alternative payment model by January 1, 2021, and annually thereafter. The Commissioner shall issue a policy and guidelines manual by January 1 of each year that specifies the types of payments and payment models which may be credited toward the fifty percent (50%) target.

2. Population-based contracts

- a. It is in the interest of the public to encourage population-based contracting, and specifically, to direct the evolution of population-based contracts toward downside risk over time. Downside risk strengthens provider economic incentives to act as responsible stewards of scarce health care resources and to proactively manage the health needs of their patient populations. These practices are necessary to support the achievement of more affordable health insurance.
- b. This § 4.10(D)(2) of this Part applies to Population-Based Contracts between an Integrated System of Care and a health insurer which are entered into, renewed, or amended on or after July 1, 2020, or the effective date of this regulation, if earlier. Each health insurer shall comply with the requirements of this § 4.10(D)(2) of this Part.
- c. By January 2021, health insurers shall take such actions as necessary to have thirty percent (30%) of Rhode Island resident commercial insured covered lives attributed to a risk-sharing contract or global capitation contract.
- d. Risk-sharing contracts with ten thousand (10,000) or more attributed lives shall meet the Minimum Downside Risk requirements of this § 4.10(D)(2)(d) of this Part. For the purposes of § 4.10(D)(2)(d), contracts with Physician-based Integrated Systems of Care may employ a risk exposure cap that is tied to the annual provider revenue from the health insurer under the contract or the total cost of care. Contracts with Integrated Systems of Care including Hospital Systems are to employ a total cost of care methodology.

- (1) For contracts with Integrated Systems of Care including Hospital Systems between ten thousand (10,000) and twenty thousand (20,000) attributed commercial lives, health insurers shall employ a risk-sharing rate of at least forty percent (40%), and if applicable, a risk-exposure cap of at least five percent (5%) of the total cost of care and a minimum loss rate of no more than three percent (3%) of the total cost of care. For such contracts entered into, renewed, or amended on or after January 1, 2021, health insurers shall employ a risk-sharing rate of at least fifty percent (50%), and if applicable, a risk-exposure cap of at least six percent (6%) and a minimum loss rate of no more than three percent (3%) of the total cost of care.
- (2) For contracts with Integrated Systems of Care including Hospital Systems with more than twenty thousand (20,000) attributed commercial lives, health insurers shall employ a risk-sharing rate of at least forty percent (40%), and if applicable, a risk-exposure cap of at least five percent (5%) of the total cost of care and a minimum loss rate of no more than two percent (2%) of the total cost of care. For such contracts entered into, renewed, or amended on or after January 1, 2021, health insurers shall employ a risk-sharing rate of at least fifty percent (50%), and if applicable, a risk-exposure cap of at least six percent (6%) and a minimum loss rate of no more than two percent (2%) of the total cost of care.
- (3) For contracts with Physician-based Integrated Systems of Care between two thousand (10,000) and twenty thousand (20,000) attributed commercial lives, health insurers shall employ a risk-sharing rate of at least forty percent (40%), and if applicable, a risk-exposure cap of at least seven percent (7%) of provider revenue or at least two percent (2%) of the total cost of care and a minimum loss rate of no more than three percent (3%) of the total cost of care. For such contracts entered into, renewed, or amended on or after January 1, 2021, health insurers shall employ a risk-sharing rate of at least fifty percent (50%), and if applicable, a risk-exposure cap of at least eight percent (8%) of provider revenue or at least three percent (3%) of the total cost of care and a minimum loss rate of no more than three percent (3%) of the total cost of care.

- (4) For contracts with Physician-based Integrated Systems of Care with more than twenty thousand (20,000) attributed commercial lives, health insurers shall employ a risk-sharing rate of at least forty percent (40%), and if applicable, a risk-exposure cap of at least eight percent (8%) of provider revenue or at least three percent (3%) of the total cost of care and a minimum loss rate of no more than two percent (2%) of the total cost of care. For such contracts entered into, renewed, or amended on or after January 1, 2021, health insurers shall employ a risk-sharing rate of at least fifty percent (50%), and if applicable, a risk-exposure cap of at least eight percent (8%) of provider revenue or at least three percent (3%) of the total cost of care and a minimum loss rate of no more than two percent (2%) of the total cost of care.
 - (5) The Minimum Downside Risk requirements above, while not applicable to risk-sharing contracts with fewer than ten thousand (10,000) attributed commercial lives, should not be construed to preclude or discourage health insurers and providers from entering into risk-sharing contracts with fewer than ten thousand (10,000) attributed lives. OHIC recommends health insurer and provider caution when doing so, however, in order to account for the decreased statistical certainty with attributed populations less than ten thousand (10,000).
 - (6) None of the requirements of this § 4.10(D)(2)(d) of this Part shall be construed to preclude contracts with greater degrees of provider risk assumption with health insurers including fee for service, capitation and global capitation contracts.
- e. 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.

- f. Population-Based Contracts shall include a provision that agrees on a budget for each contract year. 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 by October 1 of each year, based on the most recently published United States Department of Labor data). Such percentage increase shall be plus 1.5%.
- g. Should any Integrated System of Care have had three (3) immediately prior years of average historical risk-adjusted total cost of care per capita spending for the provider's attributed patient population that was significantly below the health insurer's risk-adjusted commercially insured average (statistically significant at $p \leq .05$ and excluding the provider from the calculated average), the health insurer may prospectively adjust that provider's budget upward by up to, but not more than, two percent (2%) of the provider's unadjusted expected per capita spending. The adjusted budget shall never exceed the health insurer's projected risk-adjusted commercially insured average spending. Only Integration Systems of Care with risk-sharing contracts shall qualify for the upward budget adjustment.
- h. Population-Based Contracts shall not carve out behavioral health or prescription drug claims experience from the provider budget. Population-Based Contracts may include a methodology to reflect the member-months for which the health insurer covers pharmacy and/or behavioral health claims.
- g. 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)(2) 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.

3. Primary care alternative payment models

- a. The development and implementation of alternative payment models for primary care providers is necessary to support primary care practice transformation. The implementation of alternative payment models for primary care also represents a necessary strategy to fulfill OHIC's legislative mandate to direct health insurers toward policies and practices that address the behavioral health needs of the public and greater integration of physical and behavioral health care delivery.
- b. Health insurers shall develop and implement a prospectively paid alternative payment model for primary care. Health insurers are encouraged to align their primary care alternative payment model with the State of Rhode Island Office of the Health Insurance Commissioner Primary Care Alternative Payment Model Work Group Consensus Model published on August 9, 2017.
- c. For primary care practices recognized as a Qualifying Integrated Behavioral Health Primary Care Practice under § 4.3(A)(18) of this Part, Health Insurers shall develop and implement a prospectively paid alternative payment model for primary care that compensates practices for the primary care and behavioral health services delivered by the site.
- d. Health insurers shall take such actions as necessary to achieve the following primary care alternative payment model contracting targets.
 - (1) By January 1, 2021, at least ten percent (10%) of insured Rhode Island resident covered lives shall be attributed to a prospectively paid primary care alternative payment model.
 - (2) By January 1, 2022, at least twenty-five percent (25%) of insured Rhode Island resident covered lives shall be attributed to a prospectively paid primary care alternative payment model.
 - (3) By January 1, 2023, at least forty percent (40%) of insured Rhode Island resident covered lives shall be attributed to a prospectively paid primary care alternative payment model.

- (4) By January 1, 2024, at least sixty percent (60%) of insured Rhode Island resident covered lives shall be attributed to a prospectively paid primary care alternative payment model.
 - e. No later than October 2021, the Commissioner shall convene a working group to assess health insurer, provider and patient experience under these models.
- 4. Specialist alternative payment models
 - a. It is in the interest of the public to expand innovative alternative payment models to specialist physician practices to encourage more efficient use of health care resources, reduce unwarranted variation in episode treatment costs, and improve the quality of care through the reduction of potentially avoidable complications.
 - b. Health insurers with thirty thousand (30,000) or more covered lives shall develop and implement new specialist alternative payment model contracts, and/or expand existing alternative payment model contracts with clinical professionals in the following specialties:
 - (1) Orthopedics;
 - (2) Gastroenterology;
 - (3) Cardiology;
 - (4) Behavioral health; and
 - (5) Maternity, Endocrinology, or other clinical specialties selected by the health insurer.
 - c. For each specialty, the health insurer shall develop or expand at least two (2) contracts. The term “expand existing alternative payment model contracts” includes, but is not limited to, an expansion of a health insurer’s existing contract such that more services (e.g., procedures, conditions) are included in the arrangement, or downside risk is introduced for the first time.
 - d. Qualifying alternative payment models include limited scope of service budget models, including both prospectively paid and retrospectively reconciled models, and episode-based (bundled) payments.

- e. Health insurers shall meet this requirement according to the following schedule: by December 31, 2021: two (2) specialties; by December 31, 2022: three (3) specialties; by December 31, 2023: four (4) specialties; by December 31, 2024: five (5) specialties.

5. Measure alignment

- a. The purpose of this § 4.10(D)(5) 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 health insurers, 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)(5) 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 are entered into, renewed, or amended on or after July 1, 2020, or the effective date of this regulation, if earlier.
- c. Health insurers shall adopt the Aligned Measure Sets for primary care, hospitals, Accountable Care Organizations (ACOs, otherwise known as Integrated Systems of Care as defined in § 4.3(A)(12) of this Part), maternity care, outpatient behavioral health and any other Aligned Measure Set developed pursuant to this § 4.10(D)(5) 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 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.
 - (4) Health insurers shall not incorporate a Core Measure into the terms of payment with a *de minimis* weight attached to the measure, such that performance on the Core Measure lacks meaningful financial implication for the provider.
 - (5) A health insurer may petition the Commissioner to modify or waive one (1) or more of the requirements of § 4.10(D)(5) of this Part. Any request to modify or waive one (1) or more of the requirements must articulate a clear rationale supporting the waiver request and must demonstrate how the health insurer's request will advance the quality, accessibility, and/or affordability of health care services in Rhode Island.
- 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 recommendations, for consideration by the Commissioner, that:
- (1) Propose modifications, if necessary, to existing Aligned Measure Sets to be used in contracts between health insurers and health care providers in Rhode Island.
 - (2) When possible, prioritize measures that objectively track measurable health care outcomes over measures that track the performance of screenings or other processes.
 - (3) Propose measures as Core Measures and Menu Measures.
 - (4) Propose 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
 - (7) Any other individual or organization that the Commissioner determines can bring value to the work of the Committee.
- f. OHIC will maintain a list of participating individuals or organizations with voting status. Each designated organization shall have one (1) vote and the designee must be present in order to vote.
 - g. The recommendations, 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 adopted by the Commissioner.
 - h. The Commissioner shall maintain the Aligned Measure Sets and publish them, along with any supporting documentation and interpretive guidance, on the OHIC website.
6. Hospital contracts
- a. Each health insurer shall include in its hospital contracts the terms required by § 4.10(D)(6) of this Part.
 - b. This § 4.10(D)(6) of this Part shall apply to contracts between a health insurer and a hospital licensed in Rhode Island which are entered into, renewed, or amended on or after July 1, 2020, or the effective date of this regulation, if earlier. To ensure compliance with this subsection in the event of any hospital conversions pursuant to R.I. Gen. Laws Chapter 23-17.14, the health insurer shall, in terms of contracting, treat the contract of the successor hospital or entity as a continuation of the contract of the predecessor hospital or entity with whom the health insurer had contracted.
 - 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 the 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 make interim payments in the event that interim quality performance targets have been met; provided that the interim payments are 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. A health insurer may also make prospective payments without consideration of performance, provided that if the annual quality performance targets have not been achieved, the hospital shall be required to remit unearned prospective 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 one percent (1%), or

- (2) Less than fifty percent (50%) of the average rate increase is for expected quality incentive payments.

f. Hospitals which have been paid by a health insurer at less than the median commercial payments made to all Rhode Island acute care hospitals for inpatient services, including inpatient behavioral health services, in the health insurer's provider network, as determined by the health insurer summing all of its inpatient payments (numerator) and dividing that by a sum of all DRG case weights (denominator) to provide a case-mix-adjusted discharge payment rate for each hospital for inpatient services, shall receive an equal percentage increase in payment for each inpatient service until the hospital's average payment per case-mix-adjusted DRG for inpatient services is equal to the median. At the time of the calculation, the health insurer shall utilize the most recent twelve (12) months of claims data for which the health insurer's Rhode Island hospital claim runout is at least ninety-five percent (95%) complete. The increase in payment rates shall not be construed as an ongoing price floor. The increase in payment rates shall be contractually contingent on the following:

- (1) At the conclusion of three (3) years after the first increase in payments, or at the mutual agreement of the health insurer and hospital to establish a shorter time period, the hospital shall attain performance no different or better than the national benchmark for *Clostridium difficile* (C. diff) intestinal infections, Central line-associated bloodstream infections (CLABSI), and the rate of readmission after discharge from hospital (hospital-wide) as published on the Medicare.gov Hospital Compare website;
- (2) At the mutual agreement of the health insurer and hospital, alternative quality measures and performance targets may be employed as a substitute for the quality measures and performance targets specified in § 4.10(D)(6)(f)(1). If the parties cannot agree to an alternative set of quality measures, then the quality measures and performance targets in § 4.10(D)(6)(f)(1) shall be used.
- (3) The contract contains a provision for recovery of monies paid to the hospital by the health insurer pursuant to this §

4.10(D)(6)(f) of this Part should the hospital fail to achieve the quality targets defined in § 4.10(D)(6)(f)(1) of this Part. Such provision shall be subject to audit by the Commissioner.

- g. 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.
 - h. 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)(6) 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.
7. Nothing in § 4.10(D)(2) or (6) 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 OHIC, health insurers must demonstrate the adequacy of their hospital and provider network.

E. Stakeholder input, waiver and modification

- 1. Stakeholder input plays a critical role in the formation of public policy. The transformation of the health care system, which is necessary to support improved system performance on cost and quality, is a dynamic task which relies on trust, collaboration, and open communication between stakeholders and policymakers.
 - a. The Commissioner shall convene a Payment and Care Delivery Advisory Committee by October 1 each year. The Committee shall be charged with developing recommendations for necessary actions by the Commissioner to advance health care system performance and affordability. By July 1 of each year, the Commissioner shall solicit input from members of the Committee on topics to address during the Fall meetings.

- b. 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, the Department of Health, and the state employees' health benefit plan;
 - (2) Health insurers;
 - (3) Integrated Systems of Care;
 - (4) Hospital systems;
 - (5) Health care providers, including behavioral health providers;
 - (6) Consumers; and
 - (7) Employer purchasers of health insurance and health care services.

 - c. In addition to topics concerning the improvement of health care system performance and affordability, the Commissioner shall solicit input on whether the Affordability Standards need to be modified:
 - (1) To create or maintain an effective incentive for provider organizations to participate in care transformation, population-based contracts and alternative payment models; 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 any of the requirements of § 4.10 of this Part would be manifestly unfair.
2. 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 (1) 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.

3. A health insurer shall not be held accountable for a violation of the requirements of § 4.10 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)(2) of this Part, if desired, as soon as any such circumstances arise. Failure by the health insurer to establish that good faith and reasonable efforts were undertaken shall result in penalties consistent with the Commissioner's authority under R.I. Gen. Laws Titles 27 and 42.

F. Data collection and evaluation

1. On or before fifteen (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. 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 and to monitor compliance with the Affordability Standards established in this § 4.10 of this Part. Such data may include any hospital or provider reimbursement contract, and any data relating to a hospital or provider's attainment of quality and other performance-based measures as specified in quality incentive programs referenced in §§ 4.10(D)(6)(d) and (e) of this Part.
4. To the extent possible, the Office shall use the All Payer Claims Database authorized by R.I. Gen. Laws Chapter 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 (1) 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 health 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 (1) 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 one hundred eighty (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 one hundred eighty (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 regulation 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.

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**

Type of Filing: Amendment

Agency Signature

Agency Head Signature

Agency Signing Date

Department of State

Regulation Effective Date

Department of State Initials

Department of State Date