



DEPARTMENT OF
CONSUMER
& BUSINESS
SERVICES

Division of Financial Regulation

MEMORANDUM

August 4, 2016

To: Laura Cali ✓
TK Keen
Rick Blackwell

From: Gayle Woods

Subject: Network Adequacy Administrative Rules

Explanation: The passage of HB 2468 during the 2015 Legislative Session requires the division to adopt rules prescribing annual network reporting requirements, defining nationally-recognized standards and establishing factors to be used with the factor-based approach for demonstrating compliance with network adequacy standards.

Reaction Received: Six entities submitted written comments after the public hearing was held. Two of the commenters wrote to express their support for the proposed rules. Another commenter asked for additional guidance to be developed after the rules are finalized. Other commenters asked for the rules to be revised to

- Remove requirement for insurers to disclose in the annual report how they are using telemedicine or telehealth to meet network access standards. The concern is that insurers will rely too heavily on this method of health care delivery.
- Remove Access to Care standards that could burden a medical office
- Remove the phrase “unreasonable delay”
- Add multiple quantitative measures for provider ratios for specific categories of mental health providers
- Add review standards from CMS’ 2017 Letter to Issuers in the Federally-Facilitated Marketplace to facilitate consistent enforcement action
- Renumber rule and add clarifying language regarding submissions using the factor-based approach
- Add definitions of “Marketplace” and “Essential Community Provider”

Commenters expressed concern that medical providers might be confused due the multiple methods carriers are being allowed to demonstrate compliance and a related concern that carriers will shift data collection and recordkeeping requirements to providers.

Recommended Action: Adopt rules with proposed revisions noted in the summary of the attached Hearing Officer's Report.

Fiscal Impact: There is no fiscal or economic impact from this rulemaking either for the Department or for other state agencies or local governments. Any costs incurred by the Department will be absorbed with existing resources.

Insurers will incur some expense related to provider directory requirements and preparation of the information to be reported to the division on an annual basis. The amount of expense will vary by insurer depending how well their network adequacy programs are developed and which method they choose to demonstrate compliance.

Most insurers already have provider directories in electronic format with the capacity to furnish the directories in print. Insurers might need to modify their directories in order to comply with the provider directory requirements found in these rules. Advisory committee participants informed the committee that certain provider directory requirements found in the NAIC model would be very difficult to meet because insurers don't retain information in the format outlined in the model. The model language was modified in the proposed rules in cases where consumers had ready access to the same information through other disclosures made by insurers.

There could be limited fiscal impact on medical practices that are small businesses if the insurers with whom they contract impose additional data collection or reporting requirements on them in order to develop the information required for reporting to DCBS. At this time we are unable to quantify the impact since the potential cost to these businesses is dependent on which methods are chosen to demonstrate compliance.

Advisory Committee Involvement: The division convened a rulemaking advisory committee that met on a monthly basis from July 2015 through May 2016. The committee membership included representatives of insurers, consumer groups, medical providers, producers, trade associations, the Oregon Health Insurance Marketplace and the Oregon Health Authority. Committee meetings were streamed live over the Internet. This committee assisted with developing recommendations that became the basis for the draft rules.