



August 22, 2023

Lisa Emerson
Senior Health Insurance Programs Analyst
Department of Consumer and Business Services, Division of Financial Regulation
PO Box 14480
Salem, OR 97309

SENT VIA EMAIL

RE: Comments on Primary Care Provider Assignment Rulemaking

Dear Mrs. Emerson:

Thank you for the opportunity to comment on the proposed PCP assignment rulemaking. We appreciate the draft of the rules shared at the last meeting, and the ongoing discussion about Primary Care Provider Assignment under SB 1529 (2022). There are some key clarifications we would like to request to the draft rules to make sure that they are clear and implementable by payors charged with undertaking the monumental task of assigning our members to primary care providers.

First, we reiterate our HIPAA concerns expressed in our July 24, 2023 letter and both rulemaking advisory committee meetings. We have significant concerns about how complying with SB 1529 PCP assignment requirement will lead to HIPAA violations. Currently, our process of attribution involves the sharing of Protected Health Information (PHI)/Personally Identifiable Information (PII) with providers for their attributed population when there is an established relationship between the provider and the patient based on either the patient's own direction (i.e., PCP selection) or through incurred claims. SB 1529 forced PCP assignment where there is no relationship between the patient and provider will create HIPAA violations across payors and providers because there will not be any proof of an existing relationship that would allow disclosure of PHI/PII. We would like the DFR to reconsider this approach and permit PCP assignment only if there is an existing provider/payor relationship.

We also want to offer the following comments on the draft language of the rule, which the attached redline version of the rules reflect:

- 1) Under draft OAR 836-053-0028(4)(a), we do not understand what "in all manner necessary" means and suggest removing it.
- 2) Under draft OAR 836-053-0028(4)(c), we suggest adding language that clarified that enrollee choice under will still be honored in assignment.
- 3) Under draft Under draft OAR 836-053-0028(4)(c), we are unclear what a reasonable attribution methodology would be in the absence of enrollee choice or utilization. Without this information, would insurers attribute based solely on location? This option also presents

the HIPAA concerns outlined above. We suggest that DFR wait until there is utilization or the enrollee chooses a provider prior to assigning them to a provider.

- 4) Under draft OAR 836-053-0028(4), we have some confusion about what difference is intended between the use of the words "assign" and "attribute." We believe that attribution is a specific data driven exercise, while assign is less data dependent, but would like DFR to provide clarity on what is meant by each term and whether they are interchangeable.

Additionally, we agree with the requests of other providers and payors to allow for assignment at the clinical level. We frequently see claims where members have a clear relationship with a clinic, but may have a mix of utilization across providers such that there isn't a predominant provider for the member at that clinic. Further, the technical capabilities required to intake and manage payor-provided data is usually managed at the clinic level versus the individual practitioner level. Allowing assignment to the clinic would avoid insurers having to come up with a protocol for assignment when utilization is mixed and will allow clinics to be able to more effectively address changes in providers.

Finally, we want to flag that we are going to face significant challenges in building out systems to meet these requirements by January 1, 2024. We are a little more than four months from when these rules are intended to take effect, and payers still lack clarity on several key aspects of the bill.

Thank you for your consideration, and please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mary Anne Cooper', with a long horizontal flourish extending to the right.

Mary Anne Cooper

Director of Public Affairs and Government Relations

MaryAnne.Cooper@CambiaHealth.com

836-053-0028

Primary Care Provider Assignment and Attribution methodology

(1) As used in these rules:

(a) “Enrollee” means an employee, dependent of the employee or an individual otherwise eligible for a group or individual health benefit plan who has enrolled for coverage under the terms of the plan.

(b) “Primary care provider” means an individual licensed or certified in this state to provide outpatient, non-specialty medical services or the coordination of health care for the purpose of:

(A) Promoting or maintaining mental and physical health and wellness; and

(B) Diagnosis, treatment or management of acute or chronic conditions caused by disease, injury or illness.

(2) An insurer offering an individual or group policy or certificate of health insurance that reimburses the cost of hospital, medical or surgical expenses, other than coverage limited to expenses from accidents or specific diseases and limited benefit coverage, must assign an enrollee under the policy or certificate to a primary care provider if the enrollee or a parent of a minor enrollee has not selected a primary care provider by the 90th day of the plan year. If the insurer assigns the enrollee to a primary care provider, the insurer shall provide notice of the assignment to the enrollee or parent and to the primary care provider.

(3) An enrollee may select a different primary care provider at any time.

(4) Insurers must assign and attribute enrollees to primary care providers in the following hierarchal order:

(a) According to the enrollee’s selection. Insurers will communicate with enrollees ~~in all manner necessary~~ to prioritize enrollee choice of a primary care provider to complete an initial primary care provider assignment or attribution.

(b) If the enrollee does not choose a primary care provider, insurers will assign or attribute the enrollee to a provider based upon claim utilization information using the insurer’s attribution methodology.

(c) If the enrollee chooses a primary care provider, but has predominant claim utilization with a different primary care provider, the insurer will assign the enrollee to the chosen primary care provider, and will communicate with the enrollee the opportunity to select the primary care provider with predominant claim utilization.

Primary Care Provider Assignment (SB 1529)
Rules discussion draft 8-8-23

(d) If the insurer has no information pertinent to patient choice or prior utilization, the insurer ~~will assign the enrollee to a primary care provider according to any reasonable methodology that enables all enrollees the best opportunity to access covered primary care services without unreasonable delay~~ may wait to assign the enrollee until the enrollee either chooses a primary care provider or has a utilization record with a provider, whichever comes first. An insurer must continue to notify the enrollee of the option to select a provider at reasonable intervals.

(5) Insurers must establish a primary care provider assignment and attribution correction process that works in partnership with providers to correct inaccurately assigned or attributed enrollees.

Statutory/Other Authority: ORS 731.244 & Oregon House Bill 1529 (2022)

Statutes/Other Implemented: Oregon House Bill 1529 (2022) & Or Laws 2022, ch. 37, sec 8