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8/12/2022

Rules Coordinator
Washington State Office of the Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504-0255
Submitted via email to: rules@oic.wa.gov

RE: Implementation of E2SHB 1688 (R 2022 – 02)
Comments from Coordinated Care Corporation, NAIC# 95831

Dear Sir/Madam,

Coordinated Care Corporation ("CCC") appreciates the opportunity to provide feedback to the Office of the Insurance Commissioner ("OIC") on the prepublication on the Implementation of E2SHB 1688 (R 2022 – 02). CCC is a member of the Association of Washington Health Plans ("AWHP") and hereby endorses all suggestions raised in AWHP's comment letter on this rulemaking. In addition to the concerns/issues raised in the AWHP comment letter, we would also like to bring to your attention the issues/concerns discussed herein for further consideration.

Business vs. Calendar Days

The proposed language throughout this rule when mandating a requirement to be met within a certain timeframe either measure the timeframe in calendar days or business days. The lack of consistency in using one standard, as we have observed in our interaction with providers and enrollees, is going to cause greater confusion for carriers, providers, and enrollees. We would, therefore, recommend that, the OIC adopt one standard for measuring timeframe.

Definition for "certain participating facilities".

The Balance Billing Protection Act (BBPA) protects an enrollee from balance billing for emergency or non-emergency health care services performed by nonparticipating providers at certain participating facilities. The specific types of facilities that are subject to the law are limited to hospitals (including free standing emergency departments) as well as ambulatory surgical centers. Our recommendation to the OIC for consideration, is to include a definition for "certain participating facilities" in WAC 284-43B-010. This would then limit the application of the law to specific facilities – and not others such as skilled nursing facilities, Home Health agencies etc. For your consideration, please see our proposed language below.

> "For the purposes of this section, certain participating facilities means hospitals and ambulatory surgical centers that are providing services set forth in Ch 48.49 RCW."

NEW SECTION. WAC 284-43B-015 Coverage of emergency services

The proposed language in subsection (2) provides that:

> ". . . A carrier cannot require transfer of an enrollee receiving poststabilization care to a participating facility. . ."

We respectfully request that the OIC provide the statutory authority for this restriction. Specifically, health maintenance organizations are required to provide all its services through participating providers in order to be exempt from the laws of insurance (See RCW 48.46.060(1)). We believe that once the patient's medical condition has been stabilized the carrier should be permitted to review the needs of the patient and transfer the patient's care to its network providers and facilities for ongoing treatment. This is particularly important for post discharge for ongoing treatment.

Extension of the July 1, 2023, deadline

E2SHB 1688 grants the commissioner the authority to extend the application of the commercially reasonable amount paid to a nonparticipating provider for health care services described under RCW 48.49.020(1) and the dispute resolution beyond July 1, 2023, if the commissioner deems it necessary. To allow carriers ample time to configure their systems and other stakeholders impacted by the BBPA, we would recommend that, this rulemaking addresses the following:

- A definite date which the commissioner will make a determination whether or not to extend the July 1, 2023, deadline.
    - How the commissioner's decision will be communicated to carriers and other impacted stakeholders
- Whether the OIC intends to initiate a rulemaking if the July 1, 2023, deadline is extended.

WAC 284 - 43B -035 Arbitration Initiation and Selection of Arbitrator

The proposed language in subsection 1(a) sentence number 4 provides that:

> ". . . Each arbitration initiation request must be submitted to the commissioner individually and constitutes a distinct arbitration proceeding unless consolidation of requests is authorized by a court under chapter 7.04A RCW. . . "

We recommend that, the parties to the arbitration must be able to agree to consolidate the arbitration requests. We therefore propose the language below for your consideration.

> "1) (a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than ten calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) using the arbitration initiation request form found in Appendix A of this rule. A request must be submitted electronically through the website of the office of the insurance commissioner. When multiple claims are addressed in a single arbitration proceeding, subsection (3) of this section governs calculation of the ten calendar days. Each arbitration initiation request must be submitted to the commissioner individually and constitutes a distinct arbitration proceeding unless ~~consolidation of requests is authorized by a court under chapter 7.04A RCW~~agreed upon by the parties. The commissioner will assign a unique number or designation to each arbitration initiation request. The parties must include that designation in all communication related to that request. Any information submitted to the commissioner with the arbitration initiation request must be included in the notice to the noninitiating party under RCW 48.49.040. A provider or facility initiating arbitration must send the arbitration

initiation request form to the email address appearing on the website established by the designated lead organization for administration simplification in Washington state under (c) of this subsection. Any patient information submitted to the commissioner with an arbitration initiation request form must be de-identified to ensure that protected health information is not disclosed."

Clarification for comparable code under a different procedural code system

The proposed language in WAC 284 - 43B – 035(3)(5) provides that:

> "(b) Involve claims with the same procedural code, or a comparable code under a different procedural code system"

The proposed language is open to multiple interpretation. We are understanding this as bundling of procedural codes, but we anticipate, it may have a different meaning to the provider. To remove any ambiguity, we recommend that the OIC clarifies what "clarification for comparable code under a different procedural code system" entails.

Additional definitions need for clarification

We recommend the OIC adds definition for the following terminologies to enhance understanding of the requirement of the law and this rule.

1. Outpatient observation
2. Outpatient stay
3. Stabilization

Thank you for consideration of our comments. Please let me know if you have any questions. You may reach me at WACompliance@centene.com

Respectfully,

Liz Abekah
Compliance Specialist
Coordinated Care Corporation