First Choice Health™

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October 31, 2014

Jim Keogh
Policy & Rules Manager
Washington State Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504

Re: R2014-08 Provider Network Rules, phase 2

Dear Mr. Keogh:

First Choice Health Network (FCH) appreciates the opportunity to submit comments on the Office of Insurance Commissioner's (OIC) R2014-08 Provider Network Rules (phase 2) (the "Rule"). As the leading non-risk PPO network in the region, FCH offers access to its provider network to issuers (as well as employers and plan sponsors) seeking to ensure enrollees' access to a network of high quality health care providers.

FCH supports the OIC's efforts to clarify the Rule to facilitate enrollees' proper access to adequate networks. We also support the development of network standards that seek to prevent health risk avoidance and discrimination. However, we believe that the OIC can and should use this Rule making opportunity to accomplish those objectives without substantially impeding network development and other critical business functions. Unfortunately, the proposed Rule, as currently drafted, does just that.

We are most concerned about proposed WAC 284-43-330, which would establish provider contract filing, review and retention standards that are unworkable in both their ambiguity and their likelihood to impede network development, and that would add no real benefit for enrollees. We will address our concerns about 284-43-330 below, followed by a brief discussion of other provisions of concern.

WAC 284-43-330

FCH understands the Commissioner's interest in reviewing sample provider agreements, and has no objection to continuing to file such agreements 30 days prior to use to allow for such review. However, the opportunity granted to the Commissioner to extend the deeming period for an additional 15-days, without limitation, effectively establishes a 45-day advance filing/review period. Such a lengthy period materially challenges an issuer or network's ability to timely execute and implement new provider agreements as their efforts to build and enhance networks continue. We recognize that the extension is authorized by statute; however, we urge the OIC to, at a minimum, clearly establish in the Rule the circumstances under which that extension option may be exercised.

We are also concerned about 284-43-330(3), which allows the Commissioner to withdraw approval of deemed agreements "for cause", but offers no guidance as to what "cause" means or how it will be determined. The uncertainty and potential disruption created by such ambiguity makes it impossible for issuers and networks to build their networks with any confidence that they won't be disrupted (and potentially rendered no longer adequate) by subsequent withdrawal of approval. If there are circumstances under which withdrawal of approval is warranted – and given the potential for disruption to business operations and enrollees, we suggest such circumstances should be

One Union Square
600 University Street Suite 1400
Seattle, WA 98101
1.800.467.5281
Fax: 206.667.8060
www.fchn.com

truly exceptional – then those circumstances should be clearly identified in the Rule so that issuers and networks may take steps to avoid them.

With respect to negotiated provider agreements, we believe it is unnecessary and inappropriate to require the pre-filing of **all** such agreements, even where there is no material deviation from an approved sample contract. First, it has always been our position that negotiated agreements between providers and issuers or networks are proprietary and confidential. Although it may at times be necessary for the Commissioner to review negotiated agreements, we believe such review should be limited to circumstances in which (a) there is a demonstrated pattern of noncompliance or other good reason to be concerned about compliance; and (b) there is an assurance of confidentiality.

In any event, since the underlying sample agreement, upon which negotiations are based, will have been filed and approved, we question what, if anything, will be gained by this largely redundant review of **every** negotiated agreement, unless the OIC intends to insert itself into the actual negotiation process. If that is the case, we maintain that contract negotiations between willing parties should be allowed to proceed without the OIC's intervention or interference, absent some compelling reason for the OIC to become involved.

Finally, we question the capacity of the OIC's already busy staff, unless it is substantially expanded, to keep up with the massive increase in the volume of contracts that would result from the adoption of the Rule as drafted. The resulting backlog will surely frustrate issuers' and networks' efforts to further develop and enhance networks.

The proposed requirement that we pre-file all negotiated agreements is also infeasible from an operational standpoint. In practice, because of the complexity (and at times, delicacy) of negotiations between providers and issuers or networks, negotiations often continue right up to the agreement's effective date. Establishing a 30 or 45 day waiting period prior to implementation of every negotiated provider agreement will unnecessarily slow progress in developing and enhancing networks.

To be clear, FCH does not object to granting the Commissioner access to negotiated provider agreements where there is material deviation from the approved form or good reason otherwise exists. However, it is neither reasonable nor operationally feasible to require issuers and networks to file **all** negotiated contract documents with the OIC.

We raise substantially the same objections to the Rule's requirement that reimbursement agreements be filed 30 days prior to the effective date where reimbursement is tied to health outcomes, utilization of specific services, patient volume or other performance standards, and would object to the enactment of such a provision.

WAC 284-43-202

FCH has no objection to notifying the OIC upon the termination of a set percentage of certain provider types, when such terminations have the reasonable potential to affect the adequacy of our network. However, we strenuously object to any requirement that we notify the OIC in connection with each and every termination, as the proposed Rule would require with respect to hospitals. Unless a single, specific termination could reasonably be expected to impact network adequacy, such notice seems an unnecessary step that would offer little or no benefit.

WAC 284-43-225

Records related to confidential contract negotiations between willing participants are proprietary and often sensitive, for all parties. In our view, it is inappropriate for the Commissioner to have unrestricted access to those records, either as a means of establishing the occurrence of "good faith" negotiations, or for other routine purposes. Moreover, it is unclear what "good faith", as used here, even means, so it would be difficult for an issuer or network to determine which documents should be retained. Finally, we question the necessity for the proposed ten-year retention period for such documents.

Again, thank you for providing us the opportunity to participate in the revision of Provider Network Rules (phase 2). We appreciate your consideration of our comments, and look forward to continued participation in the review process.

Sincerely,

Bob Hinman
Vice President, Network Management