



MINUTES OF THE RULE HEARING OF THE

Executive Director of Health Care Policy and Financing

The Capitol Center

225 East 16th Avenue, 6th Floor Conference Room

August 24, 2011

The mission of the Department of Health Care Policy and Financing is to improve access to cost-effective, quality health care services for Coloradans.

Staff Present: Sue Birch, Executive Director; Bob Douglas, Legal Division Director, Heidi Dineen, Assistant Attorney General; Judi Carey, Coordinator; and Natalie Bishopp, Support Staff

1. Call to Order: Executive Director Birch called the meeting to order at 8:35 a.m.
2. Announcements: Ms. Birch announced that it is the policy of the Department of Health Care Policy and Financing to remind everyone in attendance that this facility is private property and that sufficient chairs are available to accommodate the size of the room. If no chairs are available, please wait in the lobby until seating becomes available and to please turn off ringers on cell phones.
3. Introduction of Rules:

Document 01 ED 11-06-01-A Revision to the Executive Director for Health Care Policy and Financing Rule Concerning the All-Payers Claims Database, Section 1.200

Ms. Birch stated that ED 11-06-01-A was up for consideration at this meeting and invited the presenters to the table.

Jed Ziegenhagen, Rates Division Director, and Phil Kalin, President/CEO, Center for Improving Value in Health Care (CIVHC), presented the proposed rule.

Mr. Ziegenhagen stated that what is measured can be managed; there is much room for improvement in health care systems; to hold everyone accountable requires accurate data and the All-Payers Claims Database (APCD) brings these all together. Mr. Ziegenhagen stated that Ms. Birch's decision at the July meeting to continue this process for a month provided the Department additional opportunities to solicit and incorporate stakeholder input into the rule. Discussions with integrated health plans resulted in a determination that there was no solution for data submission when no claim is paid. Therefore, the Department is prepared to grant a waiver of the requirements of data submission in this case.

Mr. Kalin acknowledged the work that had been done by the Department, CHIVC and stakeholders to implement the APCD and he provided an explanation of the process. Mr. Kalin stated that discussions between the Department, CHIVC and stakeholders were held during July and August leading to revisions in the proposed rule that address the right balance between submission of accurate data and meeting statutory guidelines. The current proposed rule offers a tiered approach and provides flexibility and clarity to stakeholders. The timing for rule submission will be in two stages: first, test files will be submitted by March 31st and second, actual historical data and monthly submissions will begin in June. Due to federal law, the original proposed rule text was revised to remove the requirement for submission of data from the Employee Retirement Income Security Act of 1974 (ERISA) plans or from self insured plans. Because insurance regulations preclude small group market carriers from turning over mental health data, the rule initially does not require carriers to turn over this data and CHIVC will work on statutory changes later. Mr. Kalin stated that in response to letters received recently, he felt the 90 day requirement for compliance to changes to the DSG were sufficient since any changes had to also go through the rule-making process; and that the pricing data being submitted to the APCD is substantially different than contractual and proprietary data.

ED Discussion

Ms. Birch reserved comments and moved to the public testimony portion of the meeting.

Testimony

Jandel T. Allen-Davis, MD, Vice President, Kaiser Permanente—Colorado Region (Written)

Chris Urbina, Director, Colorado Department of Public Health and Education (Written)

Philip A. Lyons, Director, Regulatory Affairs, CO, NM, MT, WY, United Healthcare (Written)

Richard G. Gebhardt & Associates, Retained Counsel, America's Health Insurance Plans (Written and Public Testimony)

Marc Reece, Associate Director, Colorado Association of Health Plans (Written and Public Testimony)

Dianne Bricker, Regional Director, America's Health Insurance Plans (Written and Public Testimony)

Public testimony included: Health Benefit Plans are clearly and thoughtfully defined in statute; some of the exclusions that are defined in statute are included in this proposed rule; by using the statutory definition of what is covered and what is not, the rule would be clearer and more consistent with statute; that by carving out some of the specialty products, the data will be more accurate; the intent of the APCD act was always to include specialty plans such as dental in order to provide an overall picture of utilization and costs of health care; that the rule be revised from a 90 day requirement to a 120 day requirement to provide files following the effective date of a rule revision; the

additional time would better conform to current IT processes and will accommodate the anticipated major changes that will come in the next few years; the provision in the rule for granting waivers for complications that cannot be anticipated provides the needed flexibility to address this; 120 days does not seem to be unreasonable and could be beneficial not only to commercial carriers but also Department staff; other APCD states have found that nothing slows the process more than frequent changes and it is hoped that changes will not occur more than semi-annually with annual changes being the most favorable; a question as to whether waivers are an appropriate mechanism as they can be contentious and costly; a suggested revision that explicitly spells out requirements that ensure that Colorado's marketplace is robust and competitive; that the rule include language that explicitly requires the Data Review Committee to consider if a data request will potentially be used to gain proprietary or trade secret information; the rule include a provision for a carrier whose data has been requested the opportunity to review their data prior to release; defining what is proprietary and/or trade secrets and who reviews the data is very subjective; a data review committee is in place and experts will be added to broaden the group as needed; that the language in the rule sufficiently defines for providers and carriers whether penalties will be assessed on a per file basis; Colorado case law defines that it is the discretion of the executive director whether to impose a penalty or waive it and that it is better to leave the parameters somewhat broad; and a request for some minor technical corrections to the Data Submission Guide.

Ms. Birch called for a recess in order to confer with counsel, review recommended and suggested changes to the proposed rule and Data Submission Guide and formulate her final decision. The meeting re-convened and Ms. Dineen, AAG, read, for the record, the list of changes proposed. Ms. Birch made her final decision on the proposed rule and the Data Submission Guide.

Ms. Birch stated that the rule had been modified with the revisions as stated in the record which she approved. Ms Birch adopted the rule and the Data Submission Guide as modified.

4. Ms. Birch adjourned the hearing at 10:30 a.m.