

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF BUSINESS REGULATION (INCLUDES THE OFFICE OF THE
HEALTH INSURANCE COMMISSIONER)**

Title of Rule: Powers and Duties of the Office of the Health Insurance Commissioner

Rule Identifier: 230-RICR-20-30-4

Rulemaking Action: Proposed Amendment

Important Dates:

Date of Public Notice: 12/06/2019

Hearing Date: 01/10/2020

End of Public Comment: 01/16/2020

Authority for this Rulemaking:

R.I. Gen. Laws § 42-14.5-1 et seq., 42-14-5, and 42-14-17.

Summary of Rulemaking Action:

The Office of the Health Insurance Commissioner (OHIC) is proposing amendments to 230-RICR-20-30-4 *Powers and Duties of the Office of the Health Insurance Commissioner*. To facilitate the public's review of the proposed amendments OHIC has prepared a paper titled **Revisions to the Affordability Standards**. The paper provides a discussion of the rationale and available evidence supporting adoption of the proposed amendments. Furthermore, the paper addresses operational considerations relevant to the proposed amendments which could not be adequately articulated in the regulation. This paper has been uploaded to the SOS website and can be found under the "Rulemaking Documents" tab.

The proposed amendments include technical modifications to § 4.3 Definitions, § 4.9 Affordable Health Insurance – General, and § 4.10 Affordable Health Insurance – Affordability Standards. Non-technical modifications to grammar and form are proposed throughout the regulation. Finally, references to dated health insurer reporting requirements are deleted. Collectively, the proposed amendments and retained provisions set forth regulatory standards for insurers to follow in their efforts to improve the affordability of their products. OHIC developed these standards to meet its statutory mandate under R.I.G.L § 42-14.5-2, which states:

"With respect to health insurance as defined in § 42-14-5, the health insurance commissioner shall discharge the powers and duties of office to:

(1) Guard the solvency of health insurers;

- (2) Protect the interests of consumers;
- (3) Encourage fair treatment of health care providers;
- (4) Encourage policies and developments that improve the quality and efficiency of health care service delivery and outcomes; and
- (5) View the health care system as a comprehensive entity and encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access."

Furthermore, in consideration of pressing behavioral health needs of the public, in 2018 the General Assembly enacted legislation that augmented OHIC's powers and duties under R.I.G.L § 42-14.5-3 with respect to the promotion of integrated behavioral health. These provisions direct OHIC:

(p) To work to ensure the health insurance coverage of behavioral health care under the same terms and conditions as other health care, and to integrate behavioral health parity requirements into the office of the health insurance commissioner insurance oversight and health care transformation efforts.

(q) To work with other state agencies to seek delivery system improvements that enhance access to a continuum of mental-health and substance-use disorder treatment in the state; and integrate that treatment with primary and other medical care to the fullest extent possible.

(r) To direct insurers toward policies and practices that address the behavioral health needs of the public and greater integration of physical and behavioral health care delivery.

The proposed amendments to § 4.9 Affordable Health Insurance – General, add improved integrated behavioral health care and reduced provision of low-value care to the articulated goals of the regulation. The proposed amendments also add the recently developed Rhode Island Cost Growth Target to the enumeration of benchmark trends that the Commissioner may reference in making the determination of whether a health insurer's products and proposed premium increases are affordable.

The proposed amendments to § 4.10 Affordable Health Insurance – Affordability Standards amend the primary care transformation and payment reform components of the Affordability Standards. Proposed amendments to § 4.10(C) provide for the continuation of health insurer payments to support advanced primary care through the patient-centered medical home (PCMH) and propose a set of policies to support behavioral health integration into primary care by removing administrative encumbrances to integration.

The proposed amendments, with respect to primary care practice transformation, require health insurers to fund primary care practices which have met the Commissioner's definition of PCMH using a payment model that complies with parameters set forth in the proposed amendments in § 4.10(C)(1)(b)(1)-(4). The definition of PCMH, § 4.3(A)(15), has been amended to include the implementation of cost management strategies and clinical quality performance attainment and/or improvement as components of the PCMH.

The proposed amendments, with respect to behavioral health integration, require that health insurers eliminate copayments for patients who have a behavioral health visit with an in-network behavioral health provider on the same day and in the same location as a primary care visit at a Qualifying Integrated Behavioral Health Primary Care Practice as defined in § 4.3(A)(18) of the regulation. The Commissioner proposes determining which primary care practices are deemed Qualifying Integrated Behavioral Health Primary Care Practices for the purposes of this provision. Furthermore, the proposed amendments require health insurers to adopt policies for Health and Behavior Assessment/Intervention (HABI) codes that are no more restrictive than current Centers for Medicare and Medicaid Services (CMS) Coding Guidelines for HABI codes and to adopt policies for the most common preventive behavioral health screenings in primary care that are no more restrictive than current applicable federal law and regulations for preventive services.

OHIC deletes language pertaining to the Care Transformation Advisory Committee and replaces this important mechanism for stakeholder engagement with a new advisory committee proposed to be convened pursuant to § 4.10(E)(1).

Proposed amendments to § 4.10(D) relate to payment reform. New sections have been added and other sections from the previous version of Part 4 have been consolidated.

§ 4.10(D)(1) requires health insurers to achieve a target for the percentage of medical payments made through alternative payment models (APMs).

§ 4.10(D)(2) introduces standards governing three common parameters of risk-based contracts. Furthermore, the proposed § 4.10(D)(2) introduces two new requirements for population-based contracting. The first requires that population-based contracts not carve out behavioral health or prescription drug claims experience from the provider budget. Accountable care demands that providers coordinate patient care along the full continuum of health care goods and services. The second provision, in light of the cap on population-based contract budget growth, grants health insurers discretion to execute an upward adjustment to the population budget for providers with low-risk adjusted spending. The intent of such adjustments is to preserve the participation of efficient providers in accountable care by recognizing their achievement in efficiency and the comparatively diminished potential they have for further cost reduction relative to higher cost providers. Finally,

§4.10(D)(2) consolidates provisions related to ACO budget trend caps from §4.10(D)(5) of the previous version of Part 4.

§ 4.10(D)(3) requires health insurer development and implementation of prospectively paid APMs for primary care. Furthermore, the amendments set forth annual targets for insurers to meet with respect to the implementation of APMs for primary care.

§ 4.10(D)(4) requires health insurer development and implementation of APMs for specialists.

§ 4.10(D)(5), pertaining to measure alignment, is amended to incorporate components of OHIC guidance on the use of aligned measure sets issued since the adoption of the measure sets in 2017. Maternity care and outpatient behavioral health measure sets have been added to the list of extant measure sets.

§ 4.10(D)(6) of the amended regulation modifies the hospital contracting requirements in two ways. First, health insurers are granted flexibility to make prospective quality payments to hospitals without consideration of performance, provided that if the annual quality performance targets have not been achieved, the hospital shall be required to remit unearned prospective payments back to the health insurer. Second, the proposed amendments provide certain hospitals a one-time opportunity to earn a value-based rate adjustment to mitigate the wide variation in commercial payments for inpatient services across Rhode Island's acute care hospitals. Eligibility for the rate adjustment depends on the hospital's reimbursement relative to the median across all hospitals in the insurer's network.

Language pertaining to population-based contracting targets from the 2015 amendments of the regulation have been deleted. Likewise, language pertaining to the Alternative Payment Methodology Advisory Committee has been deleted. Consistent with the treatment of the Care Transformation Advisory Committee, OHIC proposes to continue this important mechanism for stakeholder engagement through a new consolidated advisory committee described in § 4.10(E)(1).

The proposed amendments are supported by evidence and sound theory and are rationally related to the statutory purposes of OHIC. The remainder of the proposed amendments are changes to grammar and form.

Additional Information and Comments:

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until January 16, 2020 by contacting the appropriate party at the address listed below:

Cory King
Department of Business Regulation (includes the Office of the Health Insurance Commissioner)

1511 Pontiac Ave.
Building 69-1
Cranston, RI 02920
cory.king@ohic.ri.gov

Public Hearing:

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on January 10, 2020 at 8:30 am at RI Department of Labor & Training Conference Room, 1511 Pontiac Ave., Building 73-1, Cranston, RI 02920 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-462-9658 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Regulatory Analysis Summary and Supporting Documentation:

Pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.9 and Executive Order 15-07, OHIC conducted a regulatory and cost-benefit analysis of the proposed amendments. Interested parties are referred to the document **Proposed Amendments to 230-RICR-20-30-4 Regulatory and Cost-Benefit Analysis** for an assessment of the societal costs and benefits of the proposed amendments. OHIC believes the proposed amendments are likely to generate societal benefits that exceed the costs. The complete Cost-Benefit Analysis has been uploaded to SOS and can be found under "Rulemaking Documents."

For full regulatory analysis or supporting documentation see agency contact person above.