BUILDING ON ACT 68: HEALTH DEPARTMENT PROPOSES NEW MANAGED CARE REGULATIONS

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Just when you thought you had figured out the requirements of Act 68, Pennsylvania's new managed care law, the Department of Health ("Department") has issued a proposed regulatory scheme that addresses not only the details of Act 68 but also seeks the revision of many existing regulations. The good news is that the proposed regulations represent a more comprehensive approach that will minimize the likelihood of inconsistent regulation. Further, the Department is proposing to delete many outdated and/or obsolete requirements.

Background

To put the new regulations in perspective, let's briefly review the history of managed care regulation by the Department of Health. (Since this a whirlwind tour, the managed care regulations/statements of policy issued by the Insurance Department will not be addressed.) The HMO Act was enacted by the Pennsylvania General Assembly in 1972. In 1983, the Department of Health promulgated its existing managed care regulations. Thereafter, the Department made isolated amendments to the regulations. In 1996, the Department issued a statement of policy addressing relationships between HMOs and integrated delivery systems (IDSs).

In 1998, the General Assembly enacted a comprehensive new managed care law that has come to be known as Act 68. In December of 1998, the Department issued guidance to Act 68 through statements of policy, which offered regulatory advice on the interpretation of Act 68 when it went into effect on January 1, 1999. On December 18, 1999, the Department finally issued its proposed managed care regulations. These regulations, if enacted by the Independent Regulatory Review Commission, will replace the managed care regulations promulgated by the Department in 1983, as well as the statements of policy.

General Provisions

The proposed regulations include several new definitions which dramatically change the regulatory requirements. Rather than referencing a "Primary Care Physician," the regulations refer to a "Primary Care Provider". The Department made the terminology change in recognition that a primary care provider may not always be a physician. In a later section, the regulations specifically allow the use of a certified registered nurse practitioner as a PCP if certain criteria are met.

The General Provisions section also lists the Department's investigatory and sanctioning powers. Notably, the Department has extended its power to perform on site inspections to Integrated Delivery Systems which contract with HMO's.

Health Maintenance Organizations

The applicable Certificate of Authority and HMO operational requirements are listed in this section. The new regulations specifically recognize the growing trend of HMO delegation of certain functions to subcontractors provided that there is HMO and Department oversight. The new regulations also include requirements for Point of Service (POS) options and limited networks for enrollees. The new regulations do away with many of the requirements in existing regulations governing HMO's.

Availability and Access

The availability and access standards apply to gatekeeper PPOs, IDSs, subcontractors of managed care plans, as well as HMOs. This section sets out the somewhat controversial emergency services requirements, many of which appear in Act 68. In addition, there are disclosure requirements relating to prescription drug benefits and general requirements addressing quality assurance standards, the delegation of medical management and the other access requirements introduced by Act 68.

Complaint and Grievance Procedures

Here is one thing you need to remember: Grievances relate to medical necessity denials and may be filed by a member or, if the member consents, a health care provider. A complaint is basically everything that is not a medical necessity denial and may be filed by enrollees only.

In a provision that is destined to be controversial, this section states that a health care provider may not require an enrollee to sign a document authorizing the provider to file a grievance as a condition of providing a health care service. Further, an enrollee may rescind his previously given consent to a provider at any point during the grievance process. Enrollees and providers may not file separate and simultaneous grievances, but there is a provision allowing plans and providers to use an alternative provider dispute procedure in certain types of disputes. Stay tuned, this issue is not ready to be put to rest yet.

Health Care Provider Contracts

This section includes requirements for (1) HMO and provider contracts, (2) HMO and IDS contracts, and (3) IDS and provider contracts. The IDS requirements are significantly different from the current IDS statement of policy and will require careful review by managed care organizations and IDS subcontractors. Depending on the implementation and expectations of the Department, this set of regulations may prove to be more practical and flexible than the existing requirements.

Certified Review Entities (CRE)

All entities intending to perform medical management (utilization review) for managed care plans, other than licensed HMOs, must comply with the certification requirements of this section. The (CRE) application is available on the Department's web site.

Credentialing

The credentialing section sets out requirements for credentialing policies used by managed care plans. According to the Department's written comments, the requirements are intended to be consistent with the standards used by the national accreditation bodies, presumably the National Committee for Quality Assurance (NCQA).

Conclusion

While some of the proposed regulations may be subject to challenge for lack of statutory authority and/or necessity, the proposed regulations as a whole represent a commendable attempt by the Department of Health to develop a comprehensive and up-to-date regulatory environment. It remains to be seen, however, whether the regulations will provide the type of flexibility needed in a rapidly changing the health care market. The regulations are available online at: www.pabulletin.com/secure/data/vol29/29-51/2161.html.

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