TRINIDAD NAVARRO
COMMISSIONER

STATE OF DELAWARE DEPARTMENT
OF INSURANCE

DOMESTIC & FOREIGN INSURERS BULLETIN NO. 125

TO: **ALL DOMESTIC AND FOREIGN INSURERS WRITING HEALTH INSURANCE IN DELAWARE**

RE: **IMPLEMENTATION OF SS1 TO SB 120 FOR PLAN YEAR 2022 – ACHIEVING AFFORDABILITY STANDARDS**

DATED: **October 13, 2021**

The purpose of this bulletin is to inform health care carriers that the Governor signed SS 1 for SB 120, which relates to primary care services (hereinafter "the Bill"), on October 1, 2021, and to inform health care carriers of the Department's implementation plan. Relevant sections of the Bill are also summarized below.

I. Implementation Plan

Each health care carrier should begin to:

- Make progress toward achieving the newly promulgated affordability standards beginning with plan year 2022, including using the rate review template documents on which they have been trained by the Department's Office of Value Based Health Care Delivery (OVBHCD);
- Identify internal programs in Delaware or throughout their national enterprise that could support the carrier in achieving the Bill's primary care investment requirements at 18 *Del.C* §§2503(a)(14) and alternative payment model requirements at 3342B(b)(3) and 3556A(b)(3); and
- Identify and adjust contracts with health systems to support compliance with the unit price growth requirements at 18 *Del.C* §2503(a)(12)a.

Note that Carriers are expected to be in compliance with the Bill's unit price and primary care spending requirements for Plan Year 2023 and thus are encouraged to make progress expeditiously.

The Department will:

- Annually publish a report regarding information submitted by carriers through the rate review template as required by the charging legislation for the OVBHCD at 18 *Del.C.* § 334. This year's report will likely be published this month;
- For this first year of implementation only (plan year 2022), evaluate compliance with the Bill through the rate review process and identify instances of noncompliance, but will exercise its enforcement discretion to refrain from assessing penalties or rejecting rate filings for failure to comply with the numerical requirements of the Bill;
- Introduce carriers who are new to the Delaware market to the rate review process and to the reporting requirements under the Bill without penalty in their first plan year; and
- Codify relevant regulations for future plan years after receiving appropriate public comment. The Department and its OVBHCD look forward to receiving input from collaborating state agencies, Delaware health insurance carriers and other stakeholders to inform the development of the regulations.

II. Relevant Bill Sections to be implemented for Plan Year 2022 and thereafter

Bill Section 4 amends the ratemaking section of the Insurance Code by adding 18 *Del.C.* § 2503(a)(12)a. This new subsection requires that rate filings for health benefit plans may not include aggregate unit price growth for nonprofessional services that exceed the following:

- In 2022, the greater of 3 percent or Core CPI[i] plus 1 percent.
- In 2023, the greater of 2.5 percent or Core CPI plus 1 percent.
- In 2024, 2025, and 2026, the greater of 2 percent or Core CPI plus 1 percent.

Bill Section 4 also requires at new 18 *Del.C.* § 2503(a)(14) that all rate filings by carriers with health benefit plans that cover more than 10,000 members across all fully insured products:

- Meet the spending requirements of 18 *Del.C* §§ 2503(a)(14), 3342B(b)(3) and 3556A(b)(3);
- Reflect progress with achieving the targets described in 16 *Del.C.* § 9903(a)(1)[ii]; and,
- Tie at least 50 percent of total cost of care spent within applicable health plans to an alternative payment model contract that meets the Health Care Payment Learning and Action Network (HCP-LAN) Category 3 definition for shared savings or shared savings with downside risk by 2023, with a minimum of 25 percent total cost of care covered by an alternative payment model contract that meets the definition of HCP-LAN Category 3B, which includes only contracts with downside risk.

Bill Sections 5 and 6 add new 18 *Del.C.* §§ 3342B(b)(3) and 3556A(b)(3), respectively, which require a carrier to spend at the following levels within applicable health plans:

- By 2022, spend at least 7 percent of its total cost of medical care on primary care;
- By 2023, spend at least 8.5 percent of its total cost of medical care on primary care;
- By 2024, spend at least 10 percent of its total cost of medical care on primary care; and
- By 2025, spend at least 11.5 percent of its total cost of medical care on primary care.

Bill Section 14 provides that Bill Sections 5 and 6 and 18 *Del.C.* § 2503(a)(12)a, as set forth in Bill Section 4, expire on January 1, 2027.

Questions concerning this Bulletin should be emailed to: DOI-Legal@delaware.gov.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulations, or bulletin.

Trinidad Navarro
Delaware Insurance Commissioner

[i] The Core CPI referenced in 18 *Del.C.* § 2503(a)(12) will be based on the average Core CPI over a defined period of time, also known as a lookback period. The OVBHCD has modeled a Core CPI based three possible lookback periods: previous calendar year, a rolling previous 12 months and a rolling 36 months. The Core CPI including the lookback period will be further defined in regulation.

[ii] 16 *Del.C.*9903 requires the Health Care Commission, in collaboration with the Primary Care Reform Collaborative, to design a Delaware Primary Care Model that:

(1) helps primary care providers "achieve targets for value-based care through increased participation in alternative payment models that are not paid on a fee for service or per claim basis and include quality and performance improvement requirements" and

(2) rewards primary care services that are designed to reduce health disparities and address social determinants of health.