



**BlueCross BlueShield
of New Mexico**

January 6, 2021

Kenneth Geter, Bureau Chief
New Mexico Department of Health
1190 S St. Francis Drive, Ste. N1320
Santa Fe, NM 87505

VIA EMAIL: Kenneth.geter@state.nm.us

Re: Blue Cross and Blue Shield of New Mexico Comments on Proposed Rule NMAC 7.1.31 NMAC,
"Statewide Health Care Claims Database."

Dear Mr. Geter:

Blue Cross and Blue Shield of New Mexico, a division of Health Care Service Corporation, a Mutual Legal Reserve Company (BCBSNM), appreciates the opportunity to comment on the proposed rules regarding the adaptation of a statewide health care claims database, also known as an All-Payer Claims Database (APCD). The stakeholder process and extensive work that the Department of Health (DOH) has undertaken prior to this rulemaking has led to the development of a simple rule structure which we hope will protect the interests and privacy of the data submitters and their members while also leading to greater transparency for consumers and greater insight of healthcare costs and quality within the state.

The APCD CDL 1.1. format proposed by the rules represents an industry standard for data submission to APCDs throughout the country. However, in reviewing the APCD CDL 1.1, many of the data elements at this juncture are not available to or reportable by health plans and payors. We would encourage the Department of Health (DOH) to adopt procedures in the development of the submission guide that would allow for exemptions to the submissions to reflect these realities. Additionally, below we have proposed amendments and would encourage further changes to the proposed rules that would make such exemptions possible.

Although not specifically addressed in the rulemaking, we would also encourage DOH to consider the following concerns when considering amendments to the proposed rulemaking and to the submission guide:

- The payers should not have any responsibility to review the APCD 3rd party or the state's systems for privacy/security compliance with HIPAA or our internal privacy/security standards. These are not the payer's business associates and therefore the payer will not contract with the 3rd party or state as it would under a payer's standard HIPAA obligations if these were our vendors.
- If there is a privacy or security breach of the data at the APCD 3rd party or state the payer should not be responsible under any applicable state or federal law for managing the data breach; it should be fully the state's responsibility to manage any data breach and comply with all applicable state and federal laws.

Thank you for your consideration of these general comments. We have also included specific comments on the proposed rulemaking below.

Comment 1: As noted above, the APCD-CDL 1.1 contains data elements that payers do not have access to or are unable to report at this time. A process to provide field level exceptions should be developed in the APCD submission guide and processes.

Suggest: We therefore suggest, removing the word "all" or some other change within this subsection to reflect this reality.

7.1.31.9(A)(1) Data providers must submit ~~all~~ data and health information with necessary identifiers to the database as described in the APCD-Common Data Layout (APCD-CDLTM, Version 1.1 with errata, Copyright 2018-2020 by APCD Council, National Association of Health Data Organizations, the University of New Hampshire) within the time frames in this rule and in accordance with procedures established herein.

Comment 2: It is unclear of the intent and breadth of Section 7.1.31.9(A)(2). To avoid duplicative administrative burden to third-party contractors of the state who submit claims data directly to the state agency, we recommend clarification of this provision. For example, if the Managed Care Organizations submit claims data to the Human Services Department (HSD), HSD should submit all Medicaid claims to the data vendor directly to avoid duplicative administrative burden on the MCOs and to ensure consistency in reporting across all MCOs.

Comment 3: As noted above, the data submission process and guide should include a procedure whereby payers could be exempted from submitting data unavailable or unreportable. Additionally, we recommend for consistency within the rules that the same version of the CDL is referenced in this section as in Subsection A(1).

Suggest: Adding 1.1.

7.1.31.9(B)(1)(c) provide data submissions procedures to data providers in a data submission guide that is based on a current version of the APCD-CDL 1.1TM

Comment 4: The sanctioning statement is so broad as to be ambiguous.

Suggest: Amending 7.1.31.9(B)(6) to add citation(s) relative to sanctioning authority, amounts, actions and parameters to clarify and add more specificity as to what is intended to be the potential sanction(s) for non-compliance and clarify what constitutes sanctionable non-compliance.

Comment 5: To ensure that the data reported is accurate and that data submitters have sufficient time to prepare, we recommend that the first data submission begin no sooner than January 1, 2022. This would allow payers time to prepare and for initial test submissions.

Suggest: Amending 7.1.21.9(B) to add subsection 7 as follows:

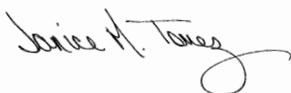
7.1.31.9(B)(7) Data shall be submitted beginning January 1, 2021.

Comment 6: Data considered proprietary is unlikely to change year over year. Submitting and reviewing exemption requests every year would be both administratively burdensome to the submitters and the reviewers. We, therefore, an initial submission process that would be approved for as long as submission by the payer continues and that only amendments be filed in following years.

A data provider that objects to the potential release of its reported data or information derived from its reported data shall submit to the department a written request to exempt its data from such disclosures. By ~~the end of each the fiscal year (June 30,th) 2020~~, data providers must notify the department in writing regarding data items that they deem proprietary. Application for an exemption must be addressed by a representative of the data provider to the department. Any approved exemption will be considered proprietary and exempt for an indefinite period of years. Each year following, the data provider will provide any amendments to the initial applications as deemed necessary by the data provider by the end of the fiscal year.

Thank you for your consideration of these comments. BCBSNM is looking forward to working collaboratively with the Department of Health and the Health Information Systems Act workgroup in the future as the APCD is developed.

Sincerely,



Janice Torrez
President