

February 19, 2021

Craig Erickson, Hearing Officer  
Utton & Kerry  
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Albuquerque, NM 87102  
[Craig@UttonKery.com](mailto:Craig@UttonKery.com)

Re: Rulemaking Hearing on 7.1.31 NMAC:  
*Department response to Rule Comments.*

Dear Mr. Erickson,

As requested, please find as follows the Department's responses to the comments submitted in response to the Rulemaking Hearing on 7.1.31 NMAC held on January 6, 2021.

Blue Cross Blue Shield Comments [1/6/21].

**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.

The Department proposes to accept this suggestion to accommodate the available access to data which must be submitted pursuant to the rule, as follows:

**7.1.31.9 SUBMISSION OF CLAIMS DATA TO DATABASE:**

**A. All-payer claims database data providers:**

**(1)** Data providers must submit all available data and health information with necessary identifiers to the database as described in the APCD-Common Data Layout (APCD-CDL™, 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.

The Department currently receives Medicaid data from the Human Services Department and anticipates that will continue to occur pursuant to the proposed rule. To address the second mentioned concern, as well as to clarify the rule, the provisions of the rule are proposed to be changed to affect this result, as follows:

(2) Any data provider used by an entity that participates in the database such as a third-party administrator or pharmacy benefit manager must provide claims data to the department or the data vendor upon request of the entity.

\* \* \* \* \*

(5) Centennial Care Managed Care Organizations provide claims data to the New Mexico Human Services Division (HSD), and who will then submit that data to the Department of Health.

**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 1.1 TM

The Department proposes to accept this suggestion to consistently describe the data format reference pursuant to the rule, as follows:

**B. Data Submission Procedures:**

- (1) The department shall:
  - (a) utilize an internet-based user interface (or similar technology) that allows for secure submission and acceptance of data submissions;
  - (b) perform quality assurance and validation of all submitted data and provide feedback to the data providers; and
  - (c) provide data submissions procedures to data providers in a data submission guide that is based on a current version of the APCD-Common Data Layout (CDL<sup>TM</sup>).

**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.

Sanctions available for violations of the proposed rule are governed by the Health Information Systems Act, section 24-14A-10 NMSA 1978, and are not amenable to the suggested revision pursuant to the Department’s rulemaking authority. Therefore, the Department declines to adopt the proposed revision.

**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 [sic].

The Department proposes to accept this suggestion to revise the proposed initial data submission date pursuant to the rule 7.1.31.9(B), as follows:

(7) Data shall be submitted beginning January 1, 2022.

**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.

The Department disputes that such changes may not occur from year to year. Legislative changes typically govern this issue, which may be enacted and occur on a regular yearly cycle; therefore, the Department declines to adopt the suggested change.

Comments of Think New Mexico [12/18/20]

We recommend revising the draft rule to add one additional subsection to either 7.1.31.11 (“General Provisions on Access to the Claims Database Data”) or 7.1.31.12 (“Access to Health Care Data Reports”), reading:

**“Health Care Transparency Website:** Data from the claims database shall be used to fulfill the requirement of the HIS Act that the department provide a free, user-friendly public website with regularly updated information about the cost and quality of health care.”

The Department already has a regulation, Health Information System Public Access Website, 7.1.29 NMAC, which provides for such public access pursuant to the Health Information Systems Act. The Department will consider revisions to both rules to provide such access once the APCD vendor system project has been completed, and so that the rules can both be revised simultaneously, something that cannot be accomplished in this rulemaking. The Department declines to adopt the proposed revision at this time.

Comments of United Healthcare Insurance Company [12/11/20].

**Comments to §7.1.31.9 – Submission of Claims Data to Database:**

**Subsection (A):** The rule should contain an exemption from the mandatory submission requirements for payers below a certain threshold level of membership. Such an exemption would align with the intent of both the statute and rule to collect data in a cost-efficient manner without creating an undue burden. APCDs across other states commonly provide submission exemptions for payers below a certain threshold membership level. For example, Delaware exempts payers with less than 1,000 members, Utah exempts payers with less than 2,500 members, and Rhode Island exempts members with less than 3,000 members. Other states have different threshold exemption levels.

The Department is advised by the Office of Superintendent of Insurance that such low-level membership payers are not present in New Mexico, so that the proposed rule revision would not be effective. The Department declines to adopt the proposed revision.

**Subsection (B)(5):** Initial submissions to the database should not require more than 3 years of historical data. APCDs across other states have typically not required more than a 3 year look back period. Further, retrieving data beyond that length would be overly burdensome as such data has been archived and is no longer available in its original format. United Healthcare estimates that it could take up to 2 years to retrieve and then format such data for submission. By the time of its submission, this data would provide only limited value and the time and expense spent providing the data would likely outweigh the benefits of submission. For these reasons we strongly recommend limiting historical data submissions to no more than the current and two previous calendar years.

The Department proposes to accept this suggestion to revise the proposed initial data historical date limit pursuant to the rule 7.1.31.9 (B) [as the initial date submission date is proposed to be 1/1/2022], as follows:

(5) Data dating to January 1, ~~2015~~2019 must be submitted initially.

**Comments to §7.1.31.11 – General Provisions on Access**

**Subsection (C):** The current proposed rule requires that requests for data be made to the Department of Health and that the Department convene a subcommittee to establish a more formalized data release process.

Similar to other state APCDs the rule should add further requirements to this process, to include the following: public posting of data release requests; notification of data requests to data submitters; and the opportunity for data submitters and the public to submit comments on data release requests for the consideration of the Department and the subcommittee.

The HIS Act gives the Department the authority to make decisions on the data release process and does not provide for delegation of that authority through a notice and comment process. The HIS Act does not require the public posting of data release requests. The HIS Act does require provider verification of data received for accuracy prior to release. The Department will develop a formal data request process and guide. The Department declines the proposed revision.

**Subsection (E):** The current proposed rule provides a general, non-binding timeline of one month for the Department to fulfill data release requests. Although non-binding, such a timeline is likely insufficient to allow for notice and comment followed by consideration of the request by the Department and subcommittee. We recommend against including a specific timeline (even if aspirational) for fulfilling these requests until after the data release process is fully established.

The timeline is non-binding, and the Department shall endeavor to meet it. The Department will gain experience with the data request process once their APCD Vendor completes the installation of the APCD IT System and may update the timeline at a future date. As the Department does not anticipate adopting the notice and comment procedure for data requests and releases, the Department declines to adopt the proposed revision.

Please advise if you require further information regarding these issues. Thank you.

Sincerely,



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Joey Wright  
Assistant General Counsel