

April 5, 2022

Melinda Froud
Rules and Publications Program Manager
Washington State Health Care Authority
Melinda.froud@hca.wa.gov

Re: WSR 22-06-080 CR-102 Rules Review | Cascade Care Select (Public Option Plan Contracting)

On behalf of the Washington State Hospital Association (WSHA) and our more than 100 hospitals and health systems members, we thank you for the opportunity to comment on the draft rules for hospital compliance with contracting requirements under RCW 41.05.405.

WSHA remains concerned that certain provisions in the draft rules appear to conflict with and exceed the requirements under E2SSB 5377. Our comments and recommended changes in this letter are intended to seek clarity and align the proposed rule more closely with the legislation.

Our specific comments are as follows:

WAC 182-400-0100 Cascade care public option hospital participation—Purpose and scope.

While we appreciate the changes made from the stakeholder draft, the rule language continues to inappropriately overstate the responsibility of hospitals. The statute under which these rules are promulgated does not require hospitals to “actively seek to contract with as many carriers...as possible.” Inclusion of this language in the regulations, even in a permissive structure, exceeds the authority’s statutory authority. We also recommend the rule provide greater clarity that the contracting requirement extends to *only* public option plans offered by a carrier and not *all* products offered by the carrier. We request the following changes to better conform to the language in RCW 41.05.405 which refers to public option plans rather than the carriers that offer them.

WAC 182-400-0100 Public option hospital participation—Purpose and scope.

(1) The Washington health benefits exchange, in partnership with the health care authority, administers public purchasing of the Washington state public option plans known as Cascade Care Select.

(2) Each hospital should consider all valid offers from ~~actively seek to contract with as many carriers that offer public option plans as possible~~ to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one ~~carrier offering~~ public option plans.

(3) In accordance with RCW 41.05.405, beginning in plan year 2023, a hospital that receives payments through a medical assistance program under chapter 74.09 RCW, or a public employees benefits board (PEBB) or a school employees benefits board (SEBB) program under chapter 41.05 RCW must contract with at least one ~~carrier offering~~ public option plans to provide in-network coverage to enrollees, if the hospital received a valid offer to contract with a ~~carrier offering~~ public option plans to provide in-network services.

WAC 182-400-0200 Definitions.

We appreciate that the proposed rule requires that the offer be in a form that a hospital could reasonably identify and act upon. We recommend changes to the definition of “valid offer to contract” to better reflect the elements considered in whether a contract offer is sustainable for a hospital. We had made this request in our stakeholder draft comments and renew it here. Factors such as a carrier’s history of claims payment, administrative burden, and commitment to the local delivery system are crucial elements to be considered in contracting decisions. We do not believe the intent is to enable carriers to force hospitals to accept terms and payment inconsistent with what is expected of carriers in general or required specifically of public option plans. We recommend the following changes to the definition:

“Valid offer to contract” means:

(a) A written offer made by a carrier to a hospital to enter into a contract with the carrier to provide in-network coverage to enrollees of the carrier's public option plans; and

(b) The carrier's offer must contain sufficient information so that a reasonable person would understand that a good faith offer has been made. The carrier must, at a minimum, include the reimbursement rate offered in a manner that constitutes a legally binding document that the parties could execute. A reasonable offer may not exclude critical parts of the hospital or health systems’ services and may not include provisions that historically have resulted in the hospital’s inability to collect payment due to unreasonable administrative requirements.

(c) The offer must clearly indicate the offer is for the carrier’s public option plan, using the term “Cascade Care Select” or by including “public option” if another name is used .

WAC 182-400-0300 Enforcement.

We believe the scope and nature of investigations in this section of the stakeholder draft significantly exceed the authority authorized under E2SSB 5377. Investigations should be limited to cases where the authority has information that a hospital declined a valid offer to contract and did not contract with at least one public option plan. There may be cases of counties where no public option plans are available that are unrelated to hospital contracting issues, such as when plans may have decided not to pursue a county, or the public option plan the hospitals is contracted with may not have been selected in the authority’s procurement. We recommend a process be added to give a hospital the opportunity provide documentation that they are compliant by being contracted with at least one public option plan before being subjected to an investigation process.

We recommend:

(2) Investigations. *The authority may open an investigation:*

(a) When the authority receives information from a carrier that a hospital failed to contract with that carrier to provide in-network coverage to enrollees of the carrier's public option plans after making a valid offer to contract;

(b) ~~When there are counties in which~~ No public option plans are available in the county where the hospital is located; or

(c) On a case-by-case basis at the authority's sole discretion.

(d) The authority shall provide the hospital with an opportunity to provide documentation that they are contracted with at least one public option plan prior to opening the investigation. If the hospital is able to provide such documentation, the investigation will not be opened.

WAC 182-400-0400 Notice of sanction appeal process.

We are proposing language to clarify that under the APA and the administrative hearing rules, a party may generally appeal a final agency decision to the superior court and that the stay of sanctions applies to both appeals under the section and appeals from the agency decision. We are also suggesting language to clarify the provision regarding application of interest on unpaid sanction amounts.

Our suggested changes:

(3) ~~The authority conducts~~ Hearings and appeals from final agency decisions shall be conducted under and governed by the procedures set forth in the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).

(5) Repayment of sanctions is stayed only if a party timely files an appeal under this section or appeals a final agency decision as set forth in the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).

(7) The authority may impose a one percent interest charge for each month sanctions are unpaid. ~~any nonpayment of sanctions.~~

Thank you again for the opportunity to comment on this important regulation. If you have questions, please contact Andrew Busz at andrewb@wsha.org.

Sincerely,



Chelene Whiteaker
Senior Vice President, Government Affairs
Washington State Hospital Association



Andrew Busz
Policy Director, Finance
Washington State Hospital Association