

February 1, 2022

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

Re: HCA Stakeholder Draft 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 stakeholder draft rules for hospital compliance with contracting requirements under RCW 41.05.405.

As currently drafted, WSHA has concerns about certain provisions in the stakeholder draft that 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.

We recommend section (2) be eliminated. We are strongly concerned about the wording in section (2) as it seems to convey a responsibility to hospitals that exceeds and conflicts with that in section (3) which makes clear that through RCW 41.05.405 a hospital can meet the requirement by contracting with at least one plan.

~~*(2) Each hospital should actively seek to contract with as many public option plans as possible to ensure compliance with this chapter and to avoid sanctions.*~~

WAC 182-400-0200 Definitions.

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. While payment rates are important, there are other factors that are considered in contracting decisions. 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 plan; and

(b) The carrier's offer ~~must contain sufficient information~~ is one 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 would not exclude critical parts of the hospital or health systems'

services and would not include provisions that historically have resulted in the hospital's inability to collect payment due to unreasonable administrative requirements.

WAC 182-400-0300 Enforcement. (2) Investigations.

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. The language in the stakeholder draft indicates that the authority can investigate all cases where an offer was not accepted by a hospital.

We recommend:

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 that plan after making a valid offer to contract;

and;

(b) That hospital has not contracted with a least one public option plan.

~~*(b) When there are counties in which no public option plan is available; or*~~

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

WAC 182-400-0300 Enforcement (3) Procedure.

In the case where a hospital did not contract with at least one public option plan and received a valid offer, we believe the scope of the information requested in the stakeholder draft significantly exceeds what is needed for the authority to evaluate this circumstance. We believe information provided under (c) iii and (c) iv are sufficient. We recommend the following changes:

(c) The authority may request the following information or documentation from any party during an investigation:

~~*(i) A copy of all written communications, including emails, between the hospital and the carriers related to any potential contract offers, or contracts that have been executed related to public option plans and related discussions;*~~

~~*(ii) A copy, including the provider reimbursement rates, of any offer to contract by a public option plan. or executed contract;*~~

WAC 182-400-0300 Enforcement. (4) Sanctions for failure to accept valid contract offer.

We have significant concerns regarding this section of the stakeholder draft, and recommend the following changes:

(a) After an investigation conducted under subsection (3) of this section, if, in the authority's ~~sole~~ discretion, the authority determines that a hospital failed to accept a valid offer to contract from a public option plan, and is not contracted with any other public option plan for that plan year, the sanction amount for that plan year is as follows:

(i) For hospitals with 50 beds or fewer, ~~\$50,825,000~~; or

(ii) For hospitals with more than 50 beds, ~~\$2,0003,650~~-per bed not to exceed a total maximum of \$1,000,000.

(b) A party may appeal a sanction notice under WAC 182-400-0400.

We believe the proposed fines are exorbitant and excessive and would jeopardize hospitals' ability to care for their patients. Recently the Department of Health was given fining authority in situation of violations of hospital laws. The maximum amount DOH can fine hospitals for patient safety violation is \$1,000,000. Under no circumstances should HCA's authority for fining exceed what was allowed for DOH in situations involving patient care.

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
Association



Andrew Busz
Policy Director, Finance
Washington State Hospital
Association