

## RULE 108 PATIENT-CENTERED MEDICAL HOME STANDARDS

### Public Comments Report

We have attached all comments received on this Rule with the October 29, 2014 hearing transcript. In addition, we have included the hearing transcript and comments previously made to the Department on the proposed Rule from an earlier August 5, 2014 hearing. The Department received a substantial number of public comments on this Rule and, rather than repeating each particular comment and providing the Department's response, we will describe the common objections, and the Department's responses:

#1. The Department has now adopted a definition and language in the proposed Rule which requires the lead provider in PCMH to be a physician. The proposed Rule should follow the progressive trend to allow for a neutrally defined medical provider to lead PCMH, such as advanced practice nurses. There is no language in the Health Care Independence Act ("HCIA") or state law requiring a physician to lead the PCMH team for private health plan issuers, and, in fact, the HCIA uses neutral medical provider phraseology, "primary care clinician" in the subsection requiring the private health plan issuers to "support" PCMH.

RESPONSE: The Insurance Commissioner decided to ultimately adopt a physician-led requirement in PCMH to be consistent with that same restriction in the State Medicaid PCMH manual for several reasons. The current language in HCIA requires the issuers to "participate in the Arkansas Payment Improvement Initiatives ("APII"), and it is our understanding that in the pilot PCMH programs and PCMH programs already underway with insurers that the APII standards follow the State PCMH manual which requires a physician to lead the PCMH team model. The Commissioner does not want to create the possibility in this Rule that an insurer could develop a PCMH team model concept in direct conflict with the APII standards and State Medicaid PCMH manual, at this time. It is our understanding that this statewide standard is working and should be followed to provide consistency. The Commissioner recognizes the imperative need of nurses and advanced practice nurses to participate in PCMH teams, but the Commissioner defers to the training, qualifications and scope of practice experience for physicians to be PCMH team leaders.

#2. Why is the Department applying this Rule and requiring a PCMH support fee for all enrollees in the Marketplace or Exchange and not just to "private option" income eligible enrollees? The HCIA, in Ark. Code Ann. §20-77-2406(d), the subsection referencing PCMH, requires that health insurance carriers offering health care coverage for "program eligible individuals" to have to support PCMH and not to all enrollees in the Marketplace.

RESPONSE: The Insurance Commissioner interprets the HCIA to require support for PCMH for all enrollees in the Marketplace not just to "private option" income eligible enrollees, for several reasons. The operative language in HCIA Ark. Code Ann. §20-77-2406(d) can be interpreted to actually mean that PCMH is required to be supported in the Marketplace, or triggered, if the insurer merely

offers health care coverage for private option or “for program eligible individuals.” Secondly, in the HCIA, in Ark. Code Ann. § 20-77-2406(b)(1) the Act states that: “all participating carriers in the Arkansas Health Insurance Marketplace shall offer healthcare coverage conforming to the requirements of this subchapter,” therefore the Commissioner interprets this language such that the Legislature intended the programs in that subchapter, such as APII, and PCMH, to apply to all health insurance marketplace issuers. Thirdly, it is our understanding that the program would work more effectively for the shared savings and attribution if the program was applied to all enrollees in the Marketplace.

#3. What is the specific State statute permitting the Department to impose or issue a fee as required under Ark. Code Ann. §25-15-105?

RESPONSE: The Department acknowledges that under the HCIA that, although the Insurance Department and Arkansas Department of Health and Human Services is authorized to issue rules to implement this Act, it does not expressly refer to PCMH support fees. The Department however does not interpret the “support fee” as imposed in this proposed Rule to be a “fee or penalty” as addressed in Ark. Code Ann. §25-15-105. This is, first of all, not a “fee” the Department is collecting from its licensed insurers, nor collecting a “fee” to be transferred to state or general state revenues. The “fee” is not paid or owed to the State or to the Department, the Rule instead is requiring insurers to pay medical providers a support fee to providers who have voluntarily agreed to participate in a reimbursement program. We do not interpret that above statute to address state agency rules which coordinate voluntary, private participatory programs.