

PUBLIC COMMENTS SUMMARY

RULE 100: ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE STANDARDS

We received four (4) written public comments during the promulgation of the Rule. A description of each comment and the Department's response to the comment are detailed below. The Department's response is in red italics.

- #1. September 3, 2015 written comment from America's Health Insurance Plans (AHIP).
 - Recommends that a definition of Arkansas resident include students enrolled in health plans for an Arkansas college or university. *DEPARTMENT: we agree, and added suggested language in Section Four (4)(7).*
 - Recommends definition of "Submitting Entity" to reflect current terminology related to hospital indemnity products and to clarify that Medicare supplement plans are excluded. *DEPARTMENT: we agree, and added suggested language in Section Four (4) (21)(b).*
 - Recommends adding language extending test files deadline should the DSG Guide not be finalized in time to allow submitters to adjust their systems to the DSG. *DEPARTMENT: Unnecessary, given that a final DSG Guide will be completed no later than 9-18-2015.*
 - Recommends further language excluding fixed indemnity products and Medicare supplement policies. *DEPARTMENT: we agree, and added additional exclusions for those in Section Six (6)(B).*
 - Recommends defining and elaborating better as to what a "technical" correction to the DSG means. *DEPARTMENT: we agree, and adopted suggested language in Section Seven (7)(B).*
 - Recommends review and comment on proposed "data use agreement (DUA)," and requests "aggregated data for research or analysis purposes be made available to data submitters without charge." *DEPARTMENT: Since the date of this comment, we made part of the record a draft DUA and are distributing draft upon request. Department cannot agree to provide data without charge at this time until consultation with the Initiative Board. We intend to determine the charges or fees for data use after consultation with the Initiative Board.*
 - Recommends penalty cap of \$30,000.00. *DEPARTMENT: we adopted suggested language in Section Fourteen (14) of the Rule. In addition, we provided additional language allowing the Commissioner to reduce authorized fines including waiving fines for the 2016 year.*
 - Recommends adding additional privacy and security language. *DEPARTMENT: we agree and adopted suggested language in Section Fifteen (15) of the Rule.*
 - Recommends various language changes in the DSG to data set language. *DEPARTMENT: we have already adopted some of the suggestions and are reviewing these with the goal of completing a final DSG by 9-18-2015.*
- #2. September 11, 2015 comment from the Arkansas Medical Society.

- Recommends limiting or restricting DSG data sets for medical provider files to “allowed” charges only. *DEPARTMENT: Administrator believes there is a public policy need to study transparency of provider charges in both in-network as well as out of network situations.*
 - Recommends various restrictions in the DSG to capture provider SSN, medicare number, NPI number, Provider Tax ID, and medical school information, to avoid potential identify theft. *DEPARTMENT: we have removed provider SSN and are reviewing the other suggested limitation for the final DSG Guide.*
- #3. September 11, 2015 comment from Qual Choice.
- (Under the HealthCare Transparency Act, Act 1233 of 2015), “we are not to provide any geographic or demographic information that would allow the identification of a covered individual; the DSG, however, requires several pieces of information that could be put together to determine an individual’s identity (e.g., member gender, member date of birth, member zip code, member race, member ethnicity, employer name, date of death, marital status, retirement date).” *DEPARTMENT: The data elements in the Data Submission Guide are in conformity with the Act and Rule and do not request any direct personal identifiers as defined in Act or Rule. Unlike direct personal identifiers, the geographic and demographic information requested do not in isolation allow for the identification of an individual. The required data disclosure is derived from a “requirement of law” and is a permitted use or disclosure under HIPAA through 45 CFR 164.512 , if there are concerns related to the applicability of HIPAA or the HIPAA privacy rule on the requested disclosure pursuant to a state requirement of law. In addition, the Healthcare Transparency Act in Ark. Code Ann. § 23-61-907(a)(2)(B) prohibits re-identifying or attempting to re-identify the covered individuals that are the subject of the submitted data. Indeed, the act calls for the development of a unique identifier to protect the direct personal identifiers which are not subject to the data submission requirement and are retained by the submitting entities.*
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- #4. September 11, 2015 comment from Arkansas Blue Cross and Blue Shield.
- Recommends Department officially identify the DSG Guide and make it part of the administrative record and possibly keep the record open for making changes to DSG from first distributed version. *DEPARTMENT: we identified initial version of DSG Guide and made it part of the administrative record in 9-14-2015 hearing and are keeping record open until 9-18-2015. The initial version has been made available for review to all interested persons. We intend to distribute and publish a final version of the DSG Guide no later than 9-18-2015.*
 - Recommends the Department go through the APA rule-making process if the Commissioner adopts material modifications to the DSG. *DEPARTMENT: We disagree. The process as proposed provides sufficient safeguards against arbitrary modifications by the Commissioner. Pursuant to the proposed Rule, there can be no more than one (1) material modification to the DGS Guide each year; there is a 120 day advance notice requirement prior to implementation of the material medication; there is a thirty (30) day comment*

period. Finally, the Department has added a requirement to the proposed Rule to require approval of material modifications by the Initiative Board in Section Seven (7)(B).
