

Date: March 10, 2016

To: All Minnesota Health Plan Companies

This letter provides guidance for health insurance filings that will be offered, sold, issued, or renewed in Minnesota on or after January 1, 2017 ("Plan Year 2017"). This letter focuses on new statutory and certification requirements. This guidance applies to individual and small group health and certified dental plan filings. It includes information related to deadlines, policy changes, and other Minnesota requirements.

In addition to new requirements, the Minnesota Departments of Commerce and Health ("the Departments"), along with MNsure, will continue to review health plan filings to ensure compliance with all applicable state and federal requirements, including Minnesota Statutes and the Affordable Care Act ("ACA").

Note: Information and materials related to this letter are subject to change as corresponding Minnesota and Federal regulations are modified.

Deadlines

- May 11, 2016, 11:59 PM (Central Time): Minnesota requires all System for Electronic Rate and Form Filing ("SERFF") rate, form and binder filings, both on and off-Exchange, to be submitted and finalized.
 - June 15, 2016: Extended deadline for submitting Summary of Benefits and Coverage ("SBC").
- May 11, 2016, 11:59 PM (Central Time): All network filings must be submitted.
- August 25, 2016, 11:59 PM (Central Time): No further data changes of any kind will be permitted. Issuers will not be permitted to submit new data and will only be permitted to respond to pending data requests from the Departments.

2017 Federal and State Policy Changes and Clarifications

All filings must be in compliance with the final Health and Human Services Notice of Benefit and Payment Parameters (NBPP) for 2017 and other emerging Federal guidance. In addition, all filings must be in compliance with any applicable new laws passed by the Minnesota Legislature in 2016.

Recent Federal guidance that may affect Minnesota plan filings includes the following:

2017 NBPP¹

- The 2017 maximum annual limitation on cost sharing is \$7,150 for individual coverage and \$14,300 for family coverage.

¹ <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-04439.pdf>.

- The Center for Consumer Information and Insurance Oversight (“CCIIO”) is requiring all issuers to submit unified rate review templates (URRT) for all single risk pool products in the individual and small group markets (excluding student health plans) regardless of whether they propose rate increases, rate decreases, or no change in rates for these products.
- For benefit year 2017, the open enrollment period for individual marketplaces will be November 1, 2016 through January 31, 2017.
- 45 CFR §147.102 is revised so that it no longer refers to an employer selecting a location where employees live or reside as a principal business address. The rule now provides that if an employer does not have a business location in the issuer’s service area, but has employees who live or reside within the service area, the geographic rating area for purposes of the network plan is the rating area where the greatest number of employees within the plan’s service area live or reside as of the beginning of the plan year.
- HHS will finalize as proposed the amendment to 45 CFR §153.405(i) specifying that a contributing entity that chooses to use a third party administrator, administrative services-only contractor, or other third party to assist with its obligations under the reinsurance program must ensure that this third party administrator, administrative services-only contractor, or other third party cooperates with any audit under that section. We note that under 45 CFR §153.405(i) HHS, or its designee, has the authority to audit contributing entities’ compliance with their obligations under the reinsurance program.

CCIIO FAQ (Set 29), Oct. 23, 2015²

- Services performed in connection with a preventive colonoscopy, such as a pathology exam on a polyp biopsy, polyp removal during a colonoscopy, or pre-procedure specialist consultation, must be covered without cost sharing. In addition, prescribed medications needed in advance of a colonoscopy must be covered at no cost sharing, in accordance with clarification guidance provided by CCIIO to state regulators on November 2, 2015.
- Lactation counseling services must be covered without cost-sharing. If a plan or issuer does not have a provider in its network that can provide lactation counseling services, the plan or issuer must cover the item or service when performed by an out-of-network provider without cost sharing. CCIIO guidance also prohibits limiting insurance coverage of lactation counseling services to those provided on an in-patient basis. In addition, providers of lactation counseling services must be listed on both online and printed provider directories.
- Insurance coverage for the purchase or rental of breastfeeding equipment without cost-sharing must extend for the duration of a policyholder’s breastfeeding, rather than only while the policyholder is hospitalized or within a certain specific time frame.
- Provider directories must be updated on a monthly basis.

² <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-XXIX.pdf>.

US Preventative Services Task Force Direction³

- Screening for obesity must be covered with no cost sharing as a preventive service, as well as intensive, multicomponent behavioral interventions for adult patients with a BMI of 30 or higher. Broad weight management exclusion language is unacceptable.

Minnesota Administrative Bulletin 2015-4: Employee Counting Method in the Small Group Health Insurance Market⁴

- Health insurance issuers must choose one of two methods for determining eligible employees for group health insurance:
 - The method described under SHOP 45 CFR § 155.20: 30 hours, or
 - The method described under Minn. Stat. § 62L.02, subd. 13a: 20 hours.

An issuer must use the selected counting method across all of its plans and markets and cannot vary the method per employer or by plans sold on and off MNSure.

Minnesota Statutes § 62L.02 applies to the small group insurance market regardless of the counting method chosen by the issuer. For example, Minn. Stat. § 62L.02, subd. 26(c) allows separately-purchased health coverage under a collective bargaining agreement to be considered as a separate employer when calculating employees. Minimum Loss Ratio (MLR) and NAIC Supplemental Health Care Exhibit reporting is unaffected by which counting method is chosen by the issuer.

Minnesota Administrative Bulletin 2015-5: Gender Identity Nondiscrimination Requirements⁵

- Blanket bans on medically necessary gender identity related care, including gender confirmation surgery, are prohibited as a discriminatory practice.

Reconciling State and Federal Requirements: Minimum Contribution and Participation

- Minn. Stat. § 62L.03 sets a statewide standard for minimum participation and minimum contribution rules applicable to small employer groups outside of the November 15 through December 15 guaranteed issue window. However, Minn. Stat. § 62L.03 and 62L.12 must be reconciled with the following:
 - Federal guidance on this topic that allows issuers to set their own more lenient standards (though applied uniformly);
 - Health nondiscrimination constraints of Section 1557 of the ACA, 45 CFR § 147.104(e), Minn. Stat. § 62K.08, Minn. Stat. § 62K.02, and Minn. Stat. § 62C.19 (as applicable);
 - New Federal guidance that prohibits many employers from incorporating the individual market into their workforce benefit package⁶;
 - Minn. Stat. § 60K.46, subd. 4 statutes on the suitability of the sale of the individual policy; and
 - Minn. Stat. § 62K.05 requiring Federal conformity.

³ <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-XXIX.pdf>.

⁴ <http://mn.gov/commerce-stat/pdfs/sm-group-count-methd-bltm.pdf>.

⁵ <https://www.cards.commerce.state.mn.us/CARDS/security/search.do?method=showPoup&documentId={BC6879A1-96D5-496D-A330-B0A8A0077A98}&documentTitle=70729&documentType=5>.

⁶ <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-XXII-FINAL.pdf>.

Issuers should not recommend the individual market to any employer as a benefit solution, as compliance problems are likely to result for both issuers and their customers. Given the prohibition of discrimination based on health, issuers that allow small groups to enroll despite failing to meet Minnesota's contribution and participation requirements should create a written standard (and file the standard with the binder), and apply it uniformly without regard to the health conditions or historical/projected cost of the small employer. Issuers should use good recordkeeping demonstrating such compliance, as this documentation can be requested of an issuer under both Minn. Stat. § 62L.03, subd. 3(b) and Minn. Stat. § 62L.10, subd.1.

Minnesota Network Adequacy Review Requirements⁷

- All carriers must submit complete provider network adequacy documentation for networks that are to be newly certified **and** for provider networks that will be recertified, including provider files, geographic access maps, network adequacy attestation documents, requests for waivers, and requests for waivers for Essential Community Providers (ECPs).
- Carriers must submit provider network and ECP information using the Minnesota provider network template. The provider network template can be found at the Minnesota Department of Health ("MDH") Network Adequacy Instructions web page:
<http://www.health.state.mn.us/divs/hpsc/mcs/networkadequacy.htm>
- As with medical provider networks, stand-alone dental networks are subject to Minn. Stat. § 62Q.19 subd. 3 applying to ECP's. If a dental ECP requests a contract, and meets other contracting requirements, they must be offered participation in all networks of the health plan company.

Plan Management General Instructions

Ongoing operational and administrative instructions of Minnesota's rate, form, and binder requirements are provided within the Plan Management General Instructions of SERFF (located in the binder). Below highlights recently added topics and templates:

- Submission requirements for outlining embedded versus non-embedded (aggregate) deductibles and Out of Pocket ("OOP") Maximums within the Plan & Benefits Template.
- Trade Secret designations and requirements on how to attain the approval, as well as what documents can or cannot be asserted as trade secret.
- Inclusion of the 2015 Small Employer Group Actuarial Certification, as required under Minn. Stat. § 62L.10, subd. 1. This certification is typically due April 1, but an extension will be granted to May 11, 2016 so that this certification will be readily available through the rate filing.
- Actively Marketed Plan Template.
- Minnesota Crosswalk Template.

⁷ <http://www.health.state.mn.us/divs/hpsc/mcs/networkadequacy.htm>.

- Out-of-Network Experience Template (Minn. Stat. § 62K.07(a)(7)).
- Insurance Producer Compensation Reporting Form (Minn. Stat. § 62V.05 Subd. 3(c) and (f)).
- Provider Contracting Attestation.
- Attestation of compliance with formulary exception Independent Review Organization (IRO) process required under 45 CFR 156.122(c).

Actuarial Requirements

- Please review and meet CMS's disclosure requirements for Parts I, II and III. The following link is from the Plan Year 2016 filing instructions. Please consult the updated filing instructions for 2017 when released by CMS: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2016-Unified-Rate-Review-Instructions-20150222-Final.pdf>
 - Per the instructions discussed above, note that the Part II Written Description Justifying the Rate Increase should at a minimum describe, in plain language, the following components related to plan rate increases over 10%: 1) the scope and range of rate increase; 2) financial experience of the product; 3) changes in medical service costs; 4) changes in benefits; and 5) administrative costs and anticipated profits. The Departments expect more elaboration in Part II narratives, given that CCIIO now requires written justification at the plan level (versus product or overall) and many previous narratives have been too light on detail required per the referenced instructions.
- The Consolidated Appropriations Act of 2015⁸ provided a one year moratorium for the implementation of the annual fee on health insurance providers ("Annual Fee"). As a result, the Departments' default expectation is that this Annual Fee will not be reflected in 2017 rate justifications. However, the Departments recognize some small group plans have non-calendar timing and this moratorium could affect small group plans differently. That is, non-calendar year plan rates are overstated for Plan Year 2016, but understated for Plan Year 2017. If an actuary chooses to reflect some of the Annual Fee in the small group market for Plan Year 2017, the actuary must provide ample actuarial demonstration to justify the fairness and reasonableness of such Annual Fees in 2017 rates, given the favorable experience for 2016.
- In terms of demonstrating financial strength/good standing, Actuarial Memoranda should not discuss Risk-Based Capital. Actuaries should evaluate whether an enrollment cap is necessary or not, as there is an exception to guarantee issue based on financial strength and network capacity. For example, the actuary should evaluate how much enrollment growth could be withstood, assuming that pricing assumptions are met as expected, as well as how much enrollment growth could be withstood if the company experiences a material underwriting loss, such as 10%.
- Due to frequent public inquiry, Actuarial Memoranda should clearly, and separately, display the formula inputs, outputs, and outcome for spreading estimated MNsure user fees and estimated producer compensation evenly to all products.

⁸ <https://www.congress.gov/bill/114th-congress/house-bill/2029/text>.

Posting of Filings

In accordance with the HHS Notice of Benefit and Payment Parameters (NBPP), Minnesota must post a link to [Healthcare.gov](https://www.healthcare.gov) on its regulator website. CMS will post fields from the proposed Part I URRT, the Part II Narrative and the Part III Actuarial Memorandum (redacted). Note that the Part II Narrative should incorporate plain language, per the NBPP, and this narrative is now required for all plans (versus products) with a rate increase of greater than 10 percent.

The Departments will continue to post rate and form filing data based upon state and Federal laws, and in accordance with the implementation date selected by the health plan company on each filing reported within SERFF (Minn. Stat. § 62A.02, subd. 2 (c)).

Network adequacy data becomes public only after approved by MDH, which will generally be completed after the health plan's rate filing has been approved. If MDH receives a request for network data after the network filing and corresponding rates have been approved in a plan management binder, it will be provided to the requesting party.

2017 Benchmark Plan

The 2017 Essential Health Benefits ("EHB") plan is based on 2014 HealthPartners Gold Open Access Choice. Information on the coverages of this plan can be found at <https://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html>.

Quality Reporting System (QRS) and Quality Information Strategies (QIS)

For the purposes of the 2017 QRS requirements Minnesota will apply the Federal posting requirements. Issuers must complete a QIS Implementation and Progress Report to show that the QIS includes all the necessary components and adequately addresses the QIS criteria. Additional information will be provided in the 2017 Plan Management General Instructions.

Overview of Filing Requirements and Resources

Statutory requirements

In preparing 2017 health and certified dental plan filings, issuers should review key statutory requirements that govern filings, per the applicable licensed product, to ensure all new 2016 statutory requirements are incorporated. These include, but are not limited to requirements in the following chapters:

Chapter 62A. Accident and Health Insurance⁹

Chapter 62C. Nonprofit Health Service Plan Corporations¹⁰

Chapter 62D. Health Maintenance Organizations (HMO)¹¹

⁹ <https://www.revisor.mn.gov/statutes/?id=62A>.

¹⁰ <https://www.revisor.mn.gov/statutes/?id=62C>.

¹¹ <https://www.revisor.mn.gov/statutes/?id=62D>.

Chapter 62E. Comprehensive Health Insurance¹²
Chapter 62K. Minnesota Health Plan Market Rules¹³
Chapter 62L. Small Employer Insurance Reform¹⁴
Chapter 62Q. Health Plan Companies¹⁵
Chapter 62V. MNsure¹⁶

Companies should refer to all relevant Minnesota Statutes and Rules as well as applicable Federal law in developing form and rate filings submitted to the Departments for approval.

Additional Resources

Checklist guides for the Commerce Department Major Medical and Dental Coverage:

<https://mn.gov/commerce/industries/insurance/filings-examinations/rate-form-filings/>

MNsure Plan Certification Guidance for Qualified Dental Plans:

<https://www.MNsure.org/images/MNsure-2015-QDP-plan-certification-guidance.pdf>

MDH Network Adequacy filing instructions:

<http://www.health.state.mn.us/divs/hpsc/mcs/networkadequacy.htm>

CMS 2017 QHP Application review tools:

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/qhp.html>

MDH Accreditation Requirements:

<http://www.health.state.mn.us/divs/hpsc/mcs/accreditation.htm>

American Academy of Actuaries Practice Note, Actuarial Practices Relating to Preparing, Reviewing, and Commenting on Rate Filings Prepared in Accordance with the Affordable Care Act:

http://www.actuary.org/files/RRPN_120315.pdf

2016 Unified Rate Review Instructions Rate Filing Justification: Parts I, II, and III:

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2016-Unified-Rate-Review-Instructions-20150222-Final.pdf>

Please contact Melinda Domzalski-Hansen (Commerce) at melinda.domzalski-hansen@state.mn.us or Tom Major (Health) at tom.major@state.mn.us if you have any questions about the process.

¹² <https://www.revisor.mn.gov/statutes/?id=62E> .

¹³ <https://www.revisor.mn.gov/statutes/?id=62K> .

¹⁴ <https://www.revisor.mn.gov/statutes/?id=62L> .

¹⁵ <https://www.revisor.mn.gov/statutes/?id=62Q> .

¹⁶ <https://www.revisor.mn.gov/statutes/?id=62V> .

Sincerely,



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