Chapter XX—Health Reform

Federal law relies on state insurance regulators as the first-line enforcers of health reform provisions in the individual and small and large group insurance markets. To help ensure strong consumer protections remain in place, state insurance regulators are developing new tools and methods for comprehensive oversight of the health insurance marketplace. Examination standards continue to be developed for the health reform-related requirements that became effective January 1, 2014.

Examination Standards –
States are developing examination standards for the immediate mandates of health reform. Since the immediate mandates are new to the marketplace and regulators, each examination standard includes introductory language setting forth the appropriate health reform provision title, citation, effective date, summary of the provision, background, and cross references to FAQs. The introductory language is followed by the examination standards for the health reform mandate formatted for the NAIC’s Market Regulation Handbook.

Examination Checklist –
Once the examination standards are finalized, the standards will be placed into an examination checklist for use by state insurance regulators and health carriers. The examination checklist will serve as a uniform tool through which states and health carriers can measure compliance.

Additional Data Collection –
As the examination standards and checklist are developed, additional data may need to be collected for monitoring and oversight of the marketplace.

Collaboration Methodology –
The final component of state market conduct compliance tools for health reform is enhanced state collaboration which would provide consistent interpretation and review of the health reform standards.
## MARKET CONDUCT EXAMINATION STANDARDS

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**PROVISION TITLE:** Direct Access to Providers

**CITATION:** PHSA § 2719A

**EFFECTIVE DATE:** Plan years, and in the individual market, policy years beginning on or after September 23, 2010

**PROVISION:**

The provisions of the health reform act require that non-grandfathered small and large group employer plans and individual plans, which require or provide for designation by a covered person of a participating primary health care professional, shall permit covered individuals to designate any participating primary health care professional who is available to accept the covered person.

The provisions of the health reform act also require that a covered individual may, on behalf of a covered child, designate any participating pediatric physician as the child’s primary care health care professional, if the health care professional is available to accept the child.

12/30/14 Comment from Tim Jost: The provisions of the health reform act prohibit a health carrier, that requires the designation of a primary care health care professional, from imposing prior authorization or referral requirements for access to obstetrical and gynecological health care professional.

The health carrier shall provide a notice to a covered person that satisfies the requirements of HHS, DOL and the Treasury final regulations, regarding a covered individual’s right to designate a participating primary health care professional, including the designation of pediatric and obstetrical and gynecological specialists and the prohibition of a health carrier from imposing prior authorization or referral for a female covered person seeking coverage for obstetrical or gynecological health care professional.

**BACKGROUND:**

Regulations and associated FAQs, issued by the Department of Health and Human Services (HHS), the Department of Labor (DOL) and the Treasury set forth the requirement that for group health benefit plans, individual health plans or health carriers which require a participant to choose a participating primary care provider, the health benefit plan or health carrier must allow the participant to choose any participating primary care provider who is available to accept the participant.

With respect to a child, a health benefit plan or health carrier must allow the designation of a pediatrician as a child’s primary care provider if the provider participates in the health carrier’s health benefit plan network.

12/30/14 Comment from Tim Jost: A health benefit plan or health carrier, that requires the designation of a primary health care professional, may not impose prior authorization or referral requirements for access to obstetrical and gynecological health care professional, for a female plan participant who seeks coverage for obstetrical or gynecological health care professional.

A health benefit plan or health carrier must provide a notice informing the participants of the terms of the plan regarding designation of a primary care provider.
This provision applies to all health carriers in the individual market and to small and large group employer plans. This provision applies to non-grandfathered individual market 12/18/14 Comment from CCIIO and 12/30/14 Comment from Tim Jost, and small group and large group market health plans.

FAQs: See HHS website for guidance.

NOTES:
Standard 1
A health carrier providing individual, small group, and large group market health coverage under a health benefit plan, that requires or provides for designation of a participating primary health care professional, shall: (1) shall permit a covered person to choose any participating primary care health care professional; (2) shall allow a covered individual, on behalf of a child, to designate any participating pediatric physician as the child's primary care health care professional; and (3) for health carriers providing coverage for obstetrical or gynecological care, shall be precluded from imposing upon an insured prior authorization or referral requirements with respect to care access to provided by participating health care professionals who specialize in obstetrics or gynecology.

Apply To: All group health products, (non-grandfathered products) for plan years beginning on or after September 23, 2010

Apply To: All individual health products, (non-grandfathered products) for policy years beginning on or after September 23, 2010

Priority: Essential

Documents to be Reviewed

- Health carrier policyholder service, complaint handling. 12/18/14 Comment from North Carolina and 12/30/14 Comment from Tim Jost and claim handling, utilization management and prior authorization policies and procedures related to designation of participating primary health care professionals, including the designation of pediatric and obstetrical and gynecological specialists and prior authorization or referral regarding care access to an in-network obstetrical and gynecological health care professional.

- Policyholder files and supporting documentation, including a copy of the issued certificate of coverage or policy, letters, notices, telephone scripts, etc., regarding designation of participating primary health care professionals, pediatric, obstetrical and gynecological specialists and prior authorization or referral regarding care access to an in-network obstetrical and gynecological health care professional.

- Complaint register/logs/files

- Health carrier complaint records concerning designation of participating primary health care professionals, pediatric, obstetrical and gynecological specialists, and prior authorization or referral regarding care access to an in-network obstetrical and gynecological health care professional (supporting documentation, including, but not limited to written and phone records of inquiries, complaints, complainant correspondence and health carrier response).

- Internal appeals/grievance files, 12/18/14 Comment from North Carolina and 12/30/14 Comment from Tim Jost and adverse utilization review determinations, concerning designation of participating primary health care professionals, pediatric, obstetrical and gynecological specialists, and prior authorization or referral regarding care access to an in-network obstetrical and gynecological health care professional.

- Applicable external appeals register/logs/files, external appeal resolution and associated documentation related to designation of participating primary health care professionals, pediatric, obstetrical and gynecological specialists and prior authorization or referral regarding care access to an in-network obstetrical and gynecological health care professional.
____ Health carrier form approvals (policy language, enrollment materials, and advertising materials, as required under state statutes, rules and regulations)

____ Health carrier marketing and sales policies and procedures’ references to designation of participating primary health care professionals, pediatric, obstetrical and gynecological specialists and prior authorization or referral regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional

____ Health carrier communication and educational materials provided to applicants, enrollees, policyholders, certificateholders and beneficiaries related to designation of participating primary health care professionals, pediatric, obstetrical and gynecological and prior authorization or referral regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional

____ Training materials

____ Producer records

____ Applicable state and federal statutes, rules and regulations, and guidances

NAIC References

*Individual Market Health Insurance Coverage Model Act* (#36)  
*Small Group Market Health Insurance Model Act* (#106)  
*Model Language for Choice of Health Care Professional* (#930-A)

Other References

____ HHS/DOL/Treasury final regulations, to include FAQs and other federal resource materials

Review Procedures and Criteria

Verify that a health carrier, which requires the designation by an insured of a participating primary care health care professional, has established and implemented policies and procedures regarding (1) an insured’s right to designate any participating primary health care professional, who is willing to accept the covered person; (2) an insured’s right to designate, for a covered child, any participating pediatric physician as the child’s primary care health care professional; and (3) for health carriers providing coverage for obstetrical or gynecological care, the prohibition by a health carrier of imposing upon an insured prior authorization or referral requirements with respect to 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional

Review health carrier policyholder service, complaint handling, 12/18/14 comment from North Carolina and 12/30/14 Comment from Tim Jost, and claim handling, utilization management and prior authorization policies and procedures related to the designation of a primary health care professional, to verify adequate and appropriate policies/procedures are in place to ensure that a health carrier permits an insured to designate any participating primary health care professional, who is available to accept the covered person, as required under final regulations established by HHS, DOL and the Treasury.

Review health carrier policyholder service, complaint handling and claim handling policies and procedures related to the designation of a primary health care professional to verify adequate and appropriate policies/procedures are in place to ensure that a health carrier permits an insured, on behalf of a child, to designate any participating

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physician who specializes in pediatrics as the child’s primary care health care professional and who is available to accept the child.

Examiner Note: This provision shall not be construed to waive any exclusions of coverage under the terms and conditions of the health benefit plan with respect to coverage of pediatric care.

12/18/14 Comment from CCIIO and 12/30/14 Comment from Tim Jost If a health carrier provides individual market, or small group or large group market health insurance coverage under a health benefit plan for obstetrical or gynecological care and requires the designation by a covered person of a participating primary care health care professional, review health carrier policyholder service, complaint handling and claim handling policies and procedures related to the designation of a primary health care professional to verify that the health carrier:

- Does not require any insured’s, including a primary care health care professional’s, authorization or referral in the case of a female covered person who seeks access to coverage for obstetrical or gynecological care provided by a participating health care professional who specializes in obstetrics or gynecology; and
- Treats the provision of obstetrical and gynecological care, and the ordering of related obstetrical and gynecological items and services, by a participating health care professional who specializes in obstetrics or gynecology as the authorization of the primary care health care professional.

Examiner Note: The health carrier may require the health care professional to agree to otherwise adhere to the health carrier’s policies and procedures, including procedures for obtaining prior authorization and provider services in accordance with a treatment plan, if any, approved by the health carrier. A health care professional, who specializes in obstetrics or gynecology, means any individual, including an individual other than a physician, who is authorized under state law to provide obstetrical or gynecological care. This provision shall not be construed to waive any exclusions of coverage under the terms and conditions of the health benefit plan with respect to coverage of obstetrical or gynecological care; or preclude the health carrier involved from requiring that the participating health care professional providing obstetrical or gynecological care notify the primary care health care professional or the health carrier of treatment decisions.

Review complaint register/logs and complaint files to identify complaints pertaining to coverage denial/restriction relating to designation of participating primary health care professional and prior authorization or referral requirements regarding access to an in-network obstetrical and gynecological health care professional.

Review complaint records, to verify that, when an individual has been the subject of a restriction of health benefits coverage or has been denied health benefits coverage, due to the health carrier restricting the insured’s ability to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, or the health carrier imposing prior authorization or referral requirements upon the insured regarding access to an in-network obstetrical and gynecological health care professional, the health carrier has taken appropriate corrective action/adjustments in a timely and accurate manner.

Ascertain if the health carrier error could have been the result of some systemic issue (e.g. programming or processing error). If so, determine if the health carrier implemented appropriate corrective actions/adjustments to its systems in a timely and accurate manner. The examiner should include this information in the examination report.

Verify that the health carrier maintains proper documentation for correspondence, including website notifications, supporting corrective action provided to an individual for whom coverage of health benefits were inappropriately restricted or denied due to the health carrier restricting the insured’s ability to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, or due to the
health carrier having imposed prior authorization or referral requirements upon the insured regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

Review health carrier claim files to identify any coverage denials for claimants for whom coverage was improperly restricted or denied, due to the health carrier restricting the insured’s ability to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, or the health carrier imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

Review health carrier internal appeals/grievance register/logs/files 12/18/14 comment from North Carolina and 12/30/14 Comment from Tim Jost,, as well as records of appeals of adverse utilization review determinations, to identify any individuals for whom coverage of was improperly restricted or denied due to the health carrier restricting the insured’s ability to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, or the health carrier imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

Review of procedures should also require review of any external appeal requests and of the conclusions of external appeals addressing improper denial/restriction of coverage due to the health carrier restricting the insured’s ability to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, or the health carrier imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

Review policy form files to 12/29/14 WA Comment ensure verify approval(s) from the applicable state and, (if applicable) from the Marketplace and compare against the issued certificate or policy provided in the sample.

Verify that any marketing materials provided to insureds and prospective purchasers by the health carrier provide complete and accurate information about the insured’s right to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, and the prohibition of the health carrier from imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

Verify that health carrier communication and educational materials provided to applicants, enrollees, policyholders, certificateholders and beneficiaries provide complete and accurate information about the insured’s right to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, and the prohibition of the health carrier from imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

Verify that the health carrier has established training programs designed to inform its employees and producers about HHS, DOL and Treasury provisions and final regulations pertaining to notices required to be provided to the insured, regarding the insured’s right to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, and the prohibition of the health carrier from imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

Review health carrier training materials to verify that information provided therein is complete and accurate with regard to the insured’s right to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, and the prohibition of the health carrier from imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.
Note: With regard to conflict of state and federal law, examiners may need to review and base examinations upon applicable state statutes, rules and regulations, especially where state statutes, rules and regulations add state-specific requirements to the health reform requirements or creates a more generous benefit, and thus not preempted, as set forth in federal law.
Standard 2
A health carrier shall provide a notice to covered persons, addressing terms and conditions of the health benefit plan relating to (1) the insured’s right to designate a participating primary health care professional, pediatric or obstetrical/gynecological specialist and (2) for health carriers providing coverage for obstetrical or gynecological care, which require the designation of a primary care health professional, the prohibition of the health carrier from imposing prior authorization or referral requirements regarding access to an in-network obstetrical and gynecological health care professional, in compliance with final regulations issued by the federal Department of Health and Human Services (HHS), Department of Labor (DOL) and the Treasury.

Apply To: All group health products, (non-grandfathered products) for plan years beginning on or after September 23, 2010

Apply To: All individual health products, (non-grandfathered products) for policy years beginning on or after September 23, 2010

Priority: Essential

Documents to be Reviewed

_____ Health carrier policyholder service, complaint handling, claim handling and new business-related policies and procedures related to health carrier-issued notices regarding the insured’s right to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, and prior authorization or referral regarding access to an in-network obstetrical and gynecological health care professional

_____ Consumer notice-related requests and health carrier delivery logs or other related information or protocols

_____ Samples of notices, including any web-based forms

_____ Health carrier complaint handling policies and procedures related to incorrectly issued and/or missing notices

_____ Health carrier complaint records regarding notices (supporting documentation including, but not limited to: written and phone records of inquiries, complaints, complainant correspondence and health carrier response)

_____ Health carrier marketing and sales policies and procedures’ references to notices

_____ Training materials

_____ Producer records

_____ Applicable state and federal statutes, rules and regulations, and guidances

NAIC References

*Individual Market Health Insurance Coverage Model Act (#36)*
*Small Group Market Health Insurance Model Act (#106)*
*Model Language for Choice of Health Care Professional (#930-A)*
Other References

_____ HHS/DOL/Treasury final regulations, to include FAQs and other federal resource materials

Review Procedures and Criteria

Verify that the health carrier has established and implemented policies and procedures regarding the issuance and delivery of notices to insureds regarding (1) an insured’s right to designate a participating primary health care professional, pediatric, or obstetrical/gynecological specialist, and (2) for health carriers providing coverage for obstetrical or gynecological care, the prohibition of the health carrier from imposing prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional, with respect to participating health care professionals who specialize in obstetrics or gynecology, in accordance with final regulations established by HHS, DOL and the Treasury.

Review health carrier policyholder service, complaint handling, claim handling and new business-related policies and procedures to verify that the health carrier provides notice to covered persons of the terms and conditions of the health benefit plan and a covered person’s rights with respect to the following: (1) the designation of a participating health care professional, pediatric, or obstetrical/gynecological specialist, and (2) for health carriers providing coverage for obstetrical or gynecological care, the requirement, as set forth under final regulations established by HHS, DOL and the Treasury, that a health carrier shall not impose prior authorization or referral requirements regarding 12/30/14 Comment from Tim Jost access to an in-network obstetrical and gynecological health care professional.

For group health insurance coverage, verify that the health carrier provides notices whenever the health carrier provides a participant with a summary plan description or other similar description of benefits under a health benefit plan, in accordance with final regulations established by HHS, DOL and the Treasury.

For individual health insurance, verify that the health carrier provides notices whenever the health carrier provides a primary subscriber with a policy, certificate or contract of health insurance, in accordance with final regulations established by HHS, DOL and the Treasury.

12/30/14 Comment from Tim Jost Examiner Note: Federal regulations 45 C.F.R §147.138(a)(4)(iii) provide templates of notices for health carriers to use, to provide insureds with notices of rights with regard to direct access to providers.

Review notices issued to verify (1) that when a health carrier has not made available or has improperly issued such notice, the health carrier has taken appropriate corrective action/adjustments in a timely and accurate manner and to ascertain (2) if the health carrier error could have been the result of some systemic issue (e.g. programming or processing error). If so, determine if the health carrier implemented appropriate corrective actions/adjustments to its systems in a timely and accurate manner. The examiner should include this information in the examination report.

Verify that any marketing materials provided to insureds and prospective purchasers by the health carrier provide complete, accurate and current information about the issuance and delivery of such notices.

Verify that the health carrier has established training programs designed to inform its employees and producers about HHS, DOL and Treasury provisions and regulations pertaining to issuance and delivery of such notices.

Review health carrier’s training materials to verify that the information provided therein is complete and accurate with regard to the issuance and delivery of such notices.
Note: With regard to conflict of state and federal law, examiners may need to review and base examinations upon applicable state statutes, rules and regulations, especially where state statutes, rules and regulations add state-specific requirements to the health reform requirements or creates a more generous benefit, and thus not preempted, as set forth in federal law.