Nebraska Department of Insurance
Guidance Document
IGD - - B7

Title: Regulation of Provider Sponsored Organizations and Health Care Providers in the Business of Insurance

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This guidance document discusses the types of licensure that apply to risk-bearing health care provider organizations and exceptions to licensure requirements.

1. **Definitions**
   These terms, as used in this guidance document, have the following definitions
   a. Risk Bearing Defined

   Typically, when a provider organization enters a contract to provide future health services for fixed prepayment, that organization is engaged in the business of insurance. When a pre-defined amount of money is available to pay for an undefined quantity of certain health care services, the party responsible for providing those health care services bears risk. These providers are expected to balance the inherent conflict between an obligation to care for patients and an obligation to make profits for owners.

   b. Provider Sponsored Organization Defined

   When health care providers such as hospitals, doctors, networks, or dental practices have a majority financial interest in an organization, and those providers either directly or indirectly share substantial financial risk, they are referred to as “provider sponsored organizations.” The assumed risk can involve services over which the provider organization has a degree of control, such as physician or hospital services, and services over which the provider has little or no control, as in the case of pharmaceutical costs.

2. **Provider Organizations that Do Not Require Insurance Licensure**

These entities avoid the type of risk bearing that requires licensure.

   a. Direct Primary Care Agreements

Nebraska's Direct Primary Care Agreement Act (Act) is an example of risk involving services over which the provider organization has a greater deal of control, for which no insurance license is required. Under the Act, NEB. REV. STAT. §§ 71-9501 to 71-9511, (effective July 21, 2016), direct primary care agreements meeting the Act's requirements do not constitute insurance. The Act defines primary care as "general health care services of the type provided at the time a patient seeks preventive care or first seeks health care services for a specific health concern." Direct providers do not bill a health insurance carrier for services covered under a direct agreement, but a patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. Direct providers may contract with the State of Nebraska to service Medicaid recipients.

b. Risk-Sharing Contracts with Licensed Insurers

For provider organizations that bear risk, involvement of a licensed health insurer or HMO is an important distinction. When a provider organization agrees to assume all or part of the risk for health care expenses or services delivery under a contract with a duly licensed health insurer, for that insurer's policyholders, certificate holders, or enrollees, but the insurer or HMO ultimately retains responsibility to the policyholder, the PSO need not obtain a license from the Nebraska Department of Insurance (NDOI). An example is a group of doctors or a hospital that enters into an arrangement with an HMO to provide services to the HMO's enrollees in exchange for a fixed payment.

c. Risk-Sharing Contracts with Self-Insured Employers

When a provider organization shares risk with a self-insured employer, no license is required. This is because the employer is the entity directly liable to its employees for health care, and ERISA standards are in place to protect employees. If an employer shifts 100% of the risk to a provider organization, that is a purchase of insurance requiring licensure.

d. ACOs Participating in Medicare Value-Based Care Programs

Accountable Care Organizations (ACOs) established to participate in Medicare shared savings, bundled payments, or shared risk programs do not need an insurance license. This is the NDOI's current position – subject to change in the future if large amounts of shared risk result in solvency concerns for risk-sharing provider organizations in arrangements that do not include a licensed insurer.

3. **Provider Organizations that Require Insurance Licensure**

These entities bear risk and must be licensed.

a. Private Market Accountable Care Organizations

ACOs that only provide direct primary care may bring themselves into compliance with the Direct Primary Care Agreement Act to avoid insurance licensure requirements. If an ACO sells coverage to the public, bears risk, and it not partnered with a licensed insurer or HMO, under Nebraska law, it is engaged in the business of insurance and must be licensed.

b. Provider Organizations Serving Medicare or Medicaid

Federal and state programs that use a capitated payment model to transfer 100% of the risk to a provider organization typically require the provider organization to obtain the appropriate insurance license. Medicaid and Medicare Advantage both use the term "provider sponsored organizations" and typically require adequate provision against the risk of insolvency, including State licensure as a risk-bearing entity or HMO. See 42 U.S.C § 1396b(m)(1) (Medicaid Standard) and 42 C.F.R. § 422.350 to 422.390 (Medicare Advantage). For any applicant that seeks an HMO or PLHSO license to provide Medicaid or Medicare-related services, the NDOI coordinates application review with the involved government program, using the state standards for licensure and financial solvency, and the government program's standards for marketing, coverage documents, provider contracts, quality assurance, and appeals procedures.

c. Health Maintenance Organizations

The Health Maintenance Organizations Act defines "health maintenance organizations" (HMO) at NEB. REV. STAT. § 44-32,105 as "any person who undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis except for enrollee responsibility for copayments or deductibles." In order to qualify as providing "basic health services," the HMO must provide "as a minimum the following medically necessary services: Preventive care; emergency care; inpatient and outpatient hospital and physician care; diagnostics laboratory services; diagnostic and therapeutic radiological services; and out-of-area emergency services." If an entity provides this range of services, an HMO license is required.

d. Prepaid Limited Health Service Organizations

Provider Organizations that do not provide the full range of "basic health services" under the HMO Act may be licensed under the Prepaid Limited Health Service Organization Act. "Limited health services" are defined in NEB. REV. STAT. § 44-4702(4) to include dental, vision, mental health, substance abuse, pharmaceutical, podiatric, and "other services the Director determines to be limited health services," but the hospital, medical, surgical, or emergency services are not "limited health services" unless they are provided incident to the listed limited health services. A "prepaid limited health service organization" (PLHSO) is any entity that, "in return for a prepayment, undertakes to provide or arrange for the provision of one or more limited health services to enrollees," with a few exceptions. A Nebraska-licensed HMO, health insurer, or fraternal benefit society that is not otherwise authorized to offer limited health services on a per capita or fixed prepayment basis may obtain that authorization without obtaining a separate PLHSO license by following the procedure at NEB. REV. STAT. § 44-4707.

e. Discount Medical Plan Organizations

A "discount plan medical organization" (DMPO) contracts with providers, provider networks, or other DMPOs to offer access to medical or ancillary services at a discount and determines the charge to discount medical plan members. "Medical services" do not include pharmacy services. A DMPO is not insurance. DMPOs cannot issue marketing materials that use the terms health plan, coverage, copay, copayment, deductible, preexisting condition, guaranteed issue, premium, PPO, preferred provider organization, or other terms that could reasonably mislead an individual into believing the discount medical plan is insurance. Therefore, for

provider organizations that have entered the business of insurance by bearing risk without partnering with an insurer, a DMPO license will not be appropriate.

Conclusion

The NDOI encourages innovation through risk-sharing models that incentivize health care providers to provide quality care at an affordable price. Provider sponsored organizations aim to improve population health, increase patient satisfaction, and lower costs. The NDOI believes meaningful innovation will include consumer protections and solvency monitoring, and we strive to make government oversight as efficient as possible.