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Date: January 24, 2002
To: ALL INTERESTED PARTIES
From: Department of Managed Health Care

The following is a brief summary of the comments and events that occurred during the Financial Solvency Standards Board (FSSB) meeting on December 11, 2001.

I. Introduction: Opening remarks by Scott Syphax, Chair

1. Prior meeting minutes were approved and adopted by the Board members.

II. Discussion Regarding: Draft of Corrective Action Plans and Review/Grading Language

1. Following introductory comments from the individual Board Members, the Chair, Scott Syphax, summarized the general consensus of the Board to step away from line item drafting and to refocus its energies on the policy issue underlying the draft regulatory language. Five core issues were identified:

- (1) Determination of the appropriate process for the development of correctives action plans (“CAP”);
- (2) Identification of stakeholders that should be included in the CAP development process;
- (3) Consideration of the addition of a “Cash Standard” to supplement or replace the current tangible net equity financial solvency criterion;
- (4) Determination of the appropriate level of Departmental involvement in the CAP process including the issue of enrollee transfers; and
- (5) Identification of the appropriate standards or triggers for mandatory participation in the CAP process.

Following additional Board and public comment, two additional issues were identified:

- (6) Determination of the appropriate confidentiality protections to be afforded CAP; and

- (7) Consideration of whether the data elements contained in the Department's current electronic financial survey submission forms, if disclosed to contracting health plans, would be sufficient to allow the contracting health plans to determine whether an organization's proposed corrective action plan is appropriate.

2. Board member Melinda McIntyre-Koplin presented a flow chart describing a process for the development of a CAP. The flow chart provided that risk-bearing organizations would notify their contracting health plans of any deficiencies in the financial solvency standards and supply financial information directly to their contracting health plans on the financial survey submission forms developed by the Department. It also provided that where a contracting health plan did not provide feedback to an organization's proposed CAP, the CAP would be deemed approved by the contracting plans. Disputes over the provisions of the CAPs would be mediated by the Department or sent to arbitration for resolution. It was also suggested that during the negotiation of a CAP, health plans should be prohibited from terminating the provider's contract or transferring enrollees from the organization.

3. Following additional Board member comment on the flow chart presentation, the Board approved the following motion:

The FSSB recommends to the Department that it adopt a guiding principal that corrective action plans should be primarily worked out between the risk-bearing organizations and their contracting health plans and that direct oversight by the Department should be limited to public safety concerns.

4. Additional Board Member discussion recognized that Department intervention in the CAP process is appropriate when:

1. Risk-bearing organizations or health plans are not providing mandated financial or risk arrangement disclosures;
2. The organization and its contracting health plans can not agree on the terms of a CAP;
3. The Department receives information that the financial viability of health plan's provider network is at risk.

5. The Board members next commented on the triggering events necessitating the organization's development of a CAP. Following general comments, which included prioritizing the financial solvency criteria, a phase-in process for each financial solvency criteria, the adoption of a cash standard and the implementation of degrees or levels of CAPs, the Board approved the following motion:

The FSSB recommends to the Department that it study the appropriateness of implementing a minimum cash standard to measure the liquidity of risk-bearing organizations to meet their claims obligations.

6. The Board members next commented on the issue of enrollee transfers. Comments included: (1) prohibitions on contract terminations and enrollee block transfers beginning when the organization notifies its contracting health plans of a deficiency in one of the financial solvency criteria, (2) the adoption of safe harbors for health plans, (3) limiting prohibition on termination/block transfers to the parties' current contract period, and (4) deficiencies in claims payment timeliness should be excluded from the prohibition on contract terminations/enrollee transfers.

Public Comment:

Provider perspective: Additional protections beyond contract termination prohibitions are necessary; more consideration of the parameters for enrollees transfer should be considered, health plans should be prohibited from discontinuing product lines, which are the subject of a CAP.

Health plan perspective: Contract termination restrictions result in inappropriate governmental interference with private contracting rights. Requiring a health plan to maintain a contractual relationship with an organization that fails to meet current claims timeliness standards can result in criminal penalties for the health plan.

Following public comment, the Board failed to approve a motion recommending that the Department: (1) add the concept "no movement of members" to the proposed contract termination restrictions; (2) consider the financial impact of the movement of enrollees on an organization's corrective action plan; and (3) strike the reference to "contract termination" in the proposed regulations language.

7. Lacking consensus on the issue of enrollee transfers, the Board approved the following motion:

The FSSB recommends that stakeholders meet and discuss issues relating to restrictions on enrollee transfers and submit any alternative suggestions directly to the Department on an expedited basis.

8. Finally, the Board considered the issue of confidential treatment for material disclosed as part of the Corrective Action Plans process.

Public Comment:

Provider perspective: The Department and contracting health plans should receive and maintain all information disclosed or submitted as part of a risk-bearing organization's corrective action plan on a confidential basis.

Health plan perspective: The Department's current confidentiality policy relating to the disclosure of information contained in corrective action plans for health plan should be used as the confidentiality standard for information contained in corrective action plans submitted by risk-bearing organizations.

Consumer perspective: Full public disclosure of the information contained in a risk-bearing organization's corrective action plan is necessary to foster accountability between health plans and medical groups and to protect and alert consumers to potential disruptions in the availability of health care services.

Following the receipt of public comments, the Board did not propose or adopt a specific motion relating to the issue of confidentiality.

III. Closing Remarks/Next Steps

1. Scott Syphax, Chair made closing remarks and the meeting was adjourned.