From: DMHC Licensing eFiling

Subject: APL 24-001 – Amendment to Rule 1300.71.31 regarding calculation of the “Average Contracted Rate” for AB 72 (2016) purposes

Date: Friday, January 12, 2024 1:54 PM

Attachments: APL 24-001 – Amendment to Rule 1300.71.31 regarding calculation of the “Average Contracted Rate” for AB 72 (2016) purposes (1.12.2024)

Dear Health Plan Representative:

The Department of Managed Health Care (DMHC) hereby issues this All Plan Letter (APL) 24-001 to provide guidance to plans on the amendment to section 1300.71.31 of title 28 of the California Code of Regulations (Rule 1300.71.31).

Thank you.

Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
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Sacramento, CA 95814
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ALL PLAN LETTER

DATE: January 12, 2024

TO: All Full-Service Commercial Health Care Service Plans[1]

FROM: Sarah Ream
Chief Counsel, DMHC

SUBJECT: APL 24-001 – Amendment to Rule 1300.71.31 regarding calculation of the "Average Contracted Rate" for AB 72 (2016) purposes

On October 19, 2023, the California Office of Administrative Law approved the request by the Department of Managed Health Care (DMHC) to amend section 1300.71.31 of title 28 of the California Code of Regulations (Rule 1300.71.31). The amendment to Rule 1300.71.31 takes effect January 1, 2024. You can find the final text of the amended regulation on the DMHC's website at this link.

I. Background

Rule 1300.71.31 implements Assembly Bill (AB) 72 (Bonta, 2016). AB 72 is codified in Health and Safety Code sections 1371.30, 1371.31, and 1371.9.

Generally, AB 72 prohibits providers from "surprise balance billing" an enrollee for nonemergency services delivered in or resulting from a contracted facility by a noncontracting provider. In such circumstances, the plan must reimburse the non-contracted provider the greater of the average contracted rate (ACR) for the service or 125% of what Medicare reimburses for the service. AB 72 authorized the DMHC to implement regulations specifying the methodology plans must use when to determine the ACR.

When the DMHC promulgated Rule 1300.71.31 in 2018, the DMHC did not require health plans to adjust their payments to reflect inflation rates. However, the DMHC subsequently determined that excluding the inflator from the methodology could cause the payments to be out of step with the market and actual contracted rates as they existed at the time of service. Accordingly, the DMHC updated Rule 1300.71.31 to include an inflation adjustment requirement.

[1] This All Plan Letter does not apply Medi-Cal or Medicare Advantage products.

II. **Inflation Adjustment**

As described in the amended Rule 1300.71.31, beginning January 1, 2024, a health plan must adjust the ACR to the date the service was rendered, by the inflation rate described in Health and Safety Code section 1371.31(a)(2)(B).

If you have questions regarding this APL, please contact your health plan's assigned reviewer in the DMHC's Office of Plan Licensing.