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NCOIL HEALTH INSURANCE COMMITTEE ADOPTS MEDICAL LOSS RATIOS FOR DENTAL (DLR) HEALTH CARE SERVICES PLANS MODEL ACT

Model Will Provide Guidance to States Seeking to Pass Legislation Related to Dental Loss Ratios

Belmar, NJ – The National Council of Insurance Legislators (NCOIL) Health Insurance & Long Term Care Issues Committee met Friday and adopted the NCOIL Medical Loss Ratios for Dental (DLR) Health Care Services Plans Model Act (Model). The Model is sponsored by West Virgina Delegate Steve Westfall and co-sponsored by Illinois Representative Rita Mayfield.

Del. Westfall said, "I am proud to sponsor this Model as it will ultimately help ensure that dental insurance is affordable and available to consumers. While it took over a year for NCOIL to reach a consensus, I am thrilled that we landed on a version of the Model that the Committee and representatives from both sides could support. I thank the Committee for its patience in listening to and incorporating input from a wide variety of perspectives and I look forward to passing a bill based on this Model in West Virigina and seeing other states do the same."

Discussions around the Model began last January and it originally required carriers that issue, sell, renew, or offer a specialized dental health care service plan contract to file an MLR annual report with that states' insurance commissioner, and then provide annual rebates to enrollees if the ratio of the amount of premium revenue expended by the carrier on the costs for reimbursement for services provided to enrollees under that coverage and for activities that improve dental care quality to the total amount of premium revenue, excluding federal and state taxes and licensing or regulatory fees, and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance is less than 85%.

However, after several rounds of discussions, the Committee agreed upon a Model that requires dental plans to report DLR information to the insurance commissioner which the commissioner then aggregates for each market segment. The commissioner then calculates an average DLR for each market segment and identifies as "outliers" any dental plans that fall outside a certain scope of that average DLR. The commissioner is then authorized to take enforcement actions against

those "outliers," including ordering them to issue rebates. If a carrier remains an "outlier" for two consecutive years, that carrier is then subject to a minimum DLR percentage as determined by the commissioner via rule.

The American Dental Association (ADA) and the National Association of Dental Plans (NADP) issued a joint statement supporting the Model. The statement can be viewed here: https://ncoil.org/wp-content/uploads/2024/01/ADA-NADP-NCOIL-Model-Statement-Final-2024-01-23-logos-1.pdf

"The Committee has worked diligently for over a year to develop a Model that is well thought out and incorporates a wide range of policy perspectives," said Utah Representative Jim Dunnigan, Chair of the Committee. "While there was a lot of debate on this issue, thanks to Del. Westfall's leadership we were able to reach a consensus and produce a Model that will be very useful to legislators across the country."

"The passage of this Model by the Health Committee is an example of NCOIL at its finest and I was so glad to see it get across the finish line," said Arkansas Representative Deborah Ferguson, DDS, NCOIL Immediate Past President. "While I certainly hoped to see it pass when I was President last year, it was really important for us to take some more time to hear from more stakeholders and to work to find a solution that has widespread support."

During the drafting and deliberation process, NCOIL legislators and staff heard from a wide array of interested parties including: the ADA, the American Council of Life Insurers (ACLI), the American Association of Oral and Maxillofacial Surgeons (AAOMS), the California Dental Association (CDA), Delta Dental of California, the Health Benefits Institute (HBI), the NADP, and the Organized Dentistry Coalition (ODC).

"Passing this Model is a great indication that NCOIL is off to a productive 2024. The Committee has worked tirelessly to get the Model to a place where it could be voted on without objection and I'll be watching with great interest as it gets introduced in legislatures across the country," said Texas Representative Tom Oliverson, M.D., NCOIL President.

NCOIL CEO Commissioner Tom Considine said, "Kudos to Chair Dunnigan, Delegate Westfall, and everyone involved in passage of this important Model. The Committee put in a significant amount of time and effort to arrive at a solution that would be universally supported and it is clear that it was well worth it. This is yet another example of how NCOIL continues to be a national model of bipartisan cooperation."

The Model will now be placed on the NCOIL Executive Committee's consent agenda for final ratification during the NCOIL Spring Meeting in Nashville, TN from April 11 -14.

A full copy of the Model appears below.

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NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in

insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act over seventy years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.

National Council of Insurance Legislators (NCOIL)

Medical Loss Ratios for Dental (DLR) Health Care Services Plans Model Act

***Sponsored by Del. Steve Westfall (WV)**

***Co-sponsored by Rep. Rita Mayfield (IL)**

***Adopted by the NCOIL Health Insurance & Long Term Care Issues Committee on January 26, 2024. To be placed on the Executive Committee's agenda for final ratification at the 2024 NCOIL Spring Meeting on April 14, 2024.**

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Section 1. Title

This Act shall be known and cited as the "[State] Medical Loss Ratios for Dental (DLR) Health Care Services Plans Act."

Section 2. Purpose

The purpose of this Act is to provide for transparency of the expenditure of dental health care plan premiums, and to require annual reports and remediation if the dental loss ratio falls below a certain percentage.

Section 3. Definitions

(a) "Commissioner" means the Insurance Commissioner of this state.

(b) "Dental carrier" or "carrier" means a dental insurance company, dental service corporation, dental plan organization authorized to provide dental benefits, or a health benefits plan that includes coverage for dental services.

(c) "Dental health care service plan" or "plan" means any plan that provides coverage for dental health care services to enrollees in exchange for premiums, and does not include plans under Medicaid or CHIP.

(d) "Dental loss ratio" or "DLR" means percentage of premium dollars spent on patient care as calculated pursuant to subsection (i) in this section.

(i) The dental loss ratio is calculated by dividing the numerator by the denominator, where:

(A) The numerator is the sum of the amount incurred for clinical dental services provided to enrollees, the amount incurred on activities that improve dental care quality, and other incurred claims as defined at 45 CFR 158.140(a); and

(B) The denominator is the total amount of premium revenue, excluding federal and state taxes, licensing and regulatory fees paid, nonprofit community expenditures as defined at 45 CFR 158.162(c), and any other payments required by federal law.

(1)(a) The Commissioner shall define by rule:

(I) expenditures for clinical dental services;

(II) activities that improve dental care quality;

1. Activities conducted by an issuer intended to improve dental care quality shall not exceed five percent of net premium revenue

(III) overhead and administrative cost expenditures; and

(ii) The definitions promulgated by rule pursuant to this Section must be consistent with similar definitions that are used for the reporting of medical loss ratios by carriers offering health benefit plans in the state. Overhead and administrative costs must not be included in the numerator.

Section 4. Transparency of Patient Premium Expenditures

(a) A carrier that issues, sells, renews, or offers a specialized dental health care service plan contract shall file a Dental Loss Ratio (DLR) annual report with the Commissioner that is organized by market and product type and contains the same information required in the 2013 federal Medical Loss Ratio (MLR) Annual Reporting Form (CMS-10418). The filing must also report additional data that includes the number of enrollees, the plan cost-sharing and deductible amounts, the annual maximum coverage limit, and the number of enrollees who meet or exceed the annual coverage limit.

(b) The DLR reporting year shall be for the fiscal year during which dental coverage is provided by the plan. All terms used in the DLR annual report shall have the same meaning as used in the federal Public Health Service Act (42 U.S.C. Sec. 300gg-18), Part 158 (commencing with 158.101) of Title 45 of the Code of Federal Regulations, and Section 1367.003.

(c) If data verification of the carrier's representations in the DLR annual report is deemed necessary, the commissioner shall provide the carrier with a notification 30 days to submit any information required by the Commissioner.

(d) By January 1 of the year after the Commissioner receives the dental loss ratio information collected pursuant to subsection (a) of this Section, the Commissioner shall make the information, including the aggregate dental loss ratio and other data reported pursuant to this Section, available to the public in a searchable format on a public website that allows members of the public to compare dental loss ratios among carriers by plan type by:

(i) Posting the information on the division's website; or

(ii) Providing the information to the administrator of an all-payer health claims database. If the Commissioner provides the information to the administrator, the administrator shall make the information available to the public in a format determined by the Commissioner.

(e) The Commissioner shall report the data in this Section to the Legislature.

Section 5. Excess Revenue and Rebate

(a) The Commissioner shall aggregate dental loss ratios for each carrier by year pursuant to Section 4 for each market segment in which the carrier operates. The commissioner shall calculate an average dental loss ratio for each market segment using aggregate data for a 3-year period including data for the most recent dental loss ratio reporting year and the data for the two prior dental loss ratio reporting years.

(1) Newer experience shall be subject to reporting standards at 45 CFR 158.121

(b) The Commissioner shall calculate an average dental loss ratio for each market segment using the data pursuant to subsection 5(a), identify as outliers dental plans that fall outside 1 standard deviations of the average dental loss ratio, and report those plans to the legislature consistent with the manner set forth in subsections 4(e) and 4(d) above.

(1) A carrier shall not be considered an outlier if its DLR in a market segment is within 3 percentage points of the average dental loss ratio. A higher threshold may be set in unique circumstances as determined reasonable by the commissioner.

(c) The Commissioner shall investigate those carriers that report a DLR lower than 1 standard deviations from the mathematical average, and may take remediation or enforcement actions against them, including ordering such carriers to rebate, in a manner consistent with 45 C.F.R. Part 158(B) of the ACA all premiums paid above such amounts that would have caused said carrier to have achieved the mathematical average of the data submitted in a given year for a given market segment.

(d) The report in subsection (b) shall be organized to show year-over-year changes in a carrier's outlier status relative to meeting the 1 standard deviation outlier standard at subsection (b). If the DLR for a carrier in a market segment does not increase and remains an outlier as defined in subsection (b) after 2 consecutive years, barring unique circumstances as determined reasonable by the commissioner, the carrier shall be subject to a minimum DLR percentage by market segment. The commissioner shall promulgate rules establishing the DLR percentage based on, at minimum, the average of existing carrier loss ratios by market segment in the state to be effective no sooner than 42 months after a carrier is determined to be an outlier as defined in this section.

(e) A carrier subject to remediation in subsections (c) and (d) shall provide any rebate owing to a policyholder no later than xxxxx of the fiscal year following the year for which the ratio described in subsection (a) of this section was calculated. The Commissioner may establish alternatives to direct rebates to include premium reductions in the following benefit year.

(f) The Commissioner may promulgate rules that create a process to identify carriers that increase rates in excess of the percentage increase of the latest dental services Consumer Price Index as reported through the US Bureau of Labor Statistics.

Section 6. Rules

The Commissioner shall adopt rules as necessary to effectuate the provisions of this Act.

Section 7. Effective Date

This Act shall take effect xxxxxxx.