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TO: All Carriers Licensed to Sell Accident and Sickness Insurance in Virginia; all Health Maintenance Organizations, Health Services Plans, Dental Services Plans, and Dental Plan Organizations Licensed in Virginia

RE: Product Form, Rate and Binder Filing Information

The purpose of this letter is to notify all interested carriers of important filing information that is or will soon be available to assist individuals in preparing and submitting various health insurance products and premium rates to the Virginia Bureau of Insurance (BOI) for review and approval. Carriers that will be seeking approval from the BOI of forms and rates that are subject to the requirements of the Affordable Care Act and related state laws are encouraged to refer to this letter and the resources it identifies. Generally, this includes the following products that are intended to be sold and issued in Virginia in 2022:

- Health insurance plans to be sold in Virginia on the Health Benefit Exchange (Exchange);
- Health insurance plans to be sold in Virginia outside the Exchange; and
- Exchange-certified stand-alone dental plans (SADPs).

While most of the filing requirements addressed in this letter and in related guidance information are unchanged from prior years, there are some changes. Therefore, the BOI is providing updated information to facilitate the submission process and apprise carriers of important requirements and critical deadlines.

The term “health carrier” in this letter and throughout other guidance information prepared or posted by the BOI will have the meaning prescribed in Virginia Code § 38.2- 3438. The term “carrier” in this letter and in other guidance information refers to health carrier as defined in Virginia Code § 38.2-3438, and includes carriers filing exchange-certified SADPs.

Once the *Final 2022 Annual Letter to Issuers in the FFM* from the Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services (CMS Letter) is issued, carriers filing health insurance plans to be sold on the Exchange, and/or SADPs to be exchange-certified should pay close attention to the information contained therein. The BOI performs plan management functions for the Exchange and generally adopts similar approaches to those described in the CMS Letter.

Filing Requirements

The following documents will be updated and available in SERFF as a resource for carriers in making a 2022 filing:

- SERFF General Instructions
- SERFF Plan Management General Instructions
  - Process for Submissions Outside the Exchange
  - EHB Market Rules and Requirements
  - Stand-alone Dental Plan Market Rules

The following guidance information will be posted to: Virginia SCC - ACA Rate & Form Filing Information.

- Updated checklists for filing forms and rates with changes noted;
- A timeline of BOI Plan Management filing deadlines and general review activities in Virginia for health insurance plans; and
- Additional guidance information.

As the above information is updated, carriers will be notified of the updates through SERFF messages or posts to the appropriate BOI webpage.

Companies may use previously approved ACA compliant forms for the next plan year as long as forms remain compliant with applicable law and no changes are being proposed to the forms. New forms rather than amendments or endorsements should be submitted if revisions are necessary. If new forms are submitted that are substantially similar to previously issued forms, please identify the form and the SERFF tracking number under which it was approved, any provision(s) being changed and provide a copy of the form that redlines the change(s) under Supporting Documentation.

The BOI's "Mental Health and Substance Use Disorder Benefits Parity: Self-Compliance Tool" continues to be available on the BOI website at Virginia SCC - ACA Rate & Form Filing Information. These documents allow health carriers to evaluate their compliance with the requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA).

It has come to the BOI's attention that carriers are not defining benefits correctly for the required MHPAEA analyses. Therefore, the BOI is providing the below guidance for health carriers to follow. Additional guidance on this topic will follow, including information to be presented at the teleconference mentioned later in this letter.

As MHPAEA is driven by diagnosis/condition, Mental Health/Substance Use Disorder benefits and Medical/Surgical benefits must be defined based on the condition being treated on a given claim. Health carriers are advised that the following steps must be taken for compliance with MHPAEA and § 38.2-3412.1 B of the Code prior to submitting 2022 plans for approval:

1. Recognize that there are services that are most commonly performed to treat a Medical/Surgical condition but that may be used to treat a MH/SUD condition. When used to treat a MH/SUD condition, these services become MH/SUD benefits subject to the protections of MHPAEA;

2. When determining the expected claims dollar amounts for the Medical/Surgical services during the QTL/Financial Requirement analysis, identify the claims where that service is used to treat a MH/SUD condition and reduce the expected claim dollar amounts for that service by the dollar amounts associated with the treatment of MH/SUD conditions;

3. Ensure that cost-sharing compliant with the substantially all/predominant requirements is applied to MH/SUD benefits and that all covered services are correctly classified; and

4. Establish processing guidelines to ensure that, even if a service most commonly used to treat Medical/Surgical conditions is submitted with a MH/SUD diagnosis code on a given claim, MHPAEA-compliant Financial Requirements and QTLs are applied. This rationale also specifically requires that if a physical, occupational, or speech therapy claim is treating a MH/SUD condition (submitted with a MH/SUD diagnosis code), it must be considered a MH/SUD benefit under MHPAEA. While visit limits for any treatments for Autism Spectrum Disorder are prohibited in Virginia, visit limits should not be applied in the treatment of any other MH/SUD condition unless they satisfy the substantially all/predominant requirements.

Important Information

Please pay special attention to filing deadlines imposed by CMS and the BOI, as they are somewhat different. The CMS deadlines are set out in the CMS Letter and include a deadline of **June 16, 2021**, after which certain revisions cannot be made to a QHP application, and after which service area revisions require approval. On behalf of the Exchange, the BOI will transfer to CMS via SERFF all information included in QHP applications as of **June 16, 2021**. Even though CMS indicates a final deadline of **August 10, 2021**, to request a service area data change, the BOI has imposed a deadline of **July 15, 2021**, for health carriers in the individual and small group markets to submit voluntary service area revisions. This means that for any service area change requested following **June 16, 2021**, a request to revise the service area must be submitted to CMS by **July 15, 2021**, and the BOI must be notified of the requested revision by that date. This is also the BOI deadline for voluntary rate filing revisions for health carriers in the individual and small group markets. No voluntary service area or rate filing revisions will be accepted from health carriers after **July 15, 2021**.

Following the date of the initial transfer, **June 16, 2021**, a carrier subject to this date can only make **voluntary** changes to the information in any form, rate or binder filing if the BOI allows the change. The carrier must make the request and submit the proposed revision as a Note to Reviewer in SERFF and wait for the BOI's response prior to submitting the voluntary change in the filing. This does not apply to BOI-requested

changes.

BOI again revised the Virginia ACA Rate Filing Template (RFT) from the prior year's version. It will be posted at: Virginia SCC - ACA Rate & Form Filing Information. Health carriers in the individual and small group markets need to use this revised RFT for the 2022 ACA rate filing.

It is not necessary to submit 2021 approved rates using the new template format. However, we ask that health carriers submit with the 2022 rate filing the final, approved 2021 Virginia RFT. Please attach both Virginia RFTs under the "Supporting Documentation" Tab in SERFF and label them with the appropriate plan year first in the file name (e.g., "2021xxxxx.xsls").

Additionally, health carriers should upload a pdf of the rate sheet (Tab 10) from the 2022 RFT and place it as an Attached Document under the "Rate/Rule Schedule" in SERFF. Only one rate sheet should be included in each filing.

Since the template includes information from Form 130A and Form 130B in 14VAC5-130-10, et seq. and the Virginia Plan Schedule Comparison, it is not necessary for health carriers in the individual and small group markets to file those forms separately with form, rate and binder filings. However, carriers filing plans other than ACA plans in the individual and small group markets will continue to submit the Form 130A and Form 130B with form, rate and binder filings as they have in the past. Also, SADPs should continue to file the Virginia Plan Schedule Comparison as they have in the past.

The BOI plans to offer a teleconference on **March 30, 2021,** to discuss ACA filing procedures, MHPAEA compliance, review the revised Virginia Rate Filing Template, and other information related to the upcoming filings for those interested. Information concerning the webinar will be provided via SERFF and on the Bureau's webpage under "Workshops and Meetings" at: Virginia SCC - ACA Rate & Form Filing Information.

We encourage carriers to submit any questions related to this letter or other topics related to ACA form or rate filing in advance of the teleconference to: ACAFilingInfo@scc.virginia.gov. During the teleconference, BOI plans to respond to questions submitted in advance, without identifying the submitter. These questions also may be used to develop additional guidance documents.

Carriers are strongly encouraged to run the appropriate review tools provided by CMS prior to submission of a binder, and prior to each submission of any revised templates. These tools are designed to guard against incorrect information being provided on Healthcare.gov. The review tools and instructions may be found at: https://www.qhpcertification.cms.gov/s/Review%20Tools.

Should the carrier make it a practice of submitting templates in the binder (i) that contain errors that were identifiable through the review tools or (ii) without performing adequate reviews to identify inconsistencies between the information in the templates and the forms, these actions may be determined to be a violation of § 38.2-503 of the Code of Virginia, which may result in monetary penalties against the carrier.

As in past years, the BOI strongly encourages carriers to submit an abbreviated binder for health insurance plans in the individual and small group health insurance markets that will be offered solely outside the Exchange, whether or not the carriers intend to operate inside the Exchange in Virginia. Please review the attachment to the SERFF instructions for the filing requirements of an abbreviated binder. In order to properly populate the Plans tab of the binder, health carriers should complete the SERFF Plan and Benefits Light Template in the binder instead of the federal Plans and Benefits template for health insurance plans offered solely outside the Exchange.

A carrier must submit one complete binder per market for its health insurance plans it intends to offer inside the Exchange (using a separate binder for individual versus small group) and may file an abbreviated binder per market for health insurance plans to be offered outside the Exchange (using a separate binder for individual versus small group).

Carriers filing SADPs to be exchange-certified, whether or not the plans are intended to be offered inside the Exchange, must submit one complete binder per market and include all information required for exchange certification.

Carriers operating inside or outside the Exchange must use the 2022 federal or SERFF templates, as directed. Carriers should monitor applicable federal websites for the availability of these templates.

Legislation

In preparing submissions, carriers should also note that one or more bills considered by the Virginia General Assembly during its recent legislative session may impact their products in Virginia. As of the date of this letter, final action has not yet been taken on some of the bills. Therefore, carriers are encouraged to refer to all insurance-related bills for both content and status, at: http://lis.virginia.gov/. We will, however, try to address relevant legislation on the March 30 teleconference if possible.

Reminders

SERFF public access will be suspended for nearly the entirety of the review process. Consult the posted timeline for additional information. *Given the limited time for the BOI's review of forms, rates and binders, the BOI expects submissions to be of high quality with minimal compliance concerns. Additionally, the BOI will set short, specific response deadlines for objections made through SERFF to accommodate the review period that are less than the thirty (30) days currently required.*

Please remember to update all related forms, rates and binder filings if you make changes to one of these filings.

Plan year 2022 form filings in the individual and small group markets must be based on the 2017 essential health benefits (EHB) benchmark plan. An explanation of these benefits can be found at: Virginia SCC - ACA Rate & Form Filing Information. The EHB checklist specifies that submissions for approval in the individual and small group markets must not include combined limits on habilitative and rehabilitative services and

devices.

Please be aware that the Unified Rate Review Template (URRT) continues to be required for all health insurance plans inside and outside the Exchange in the individual and small group markets. Therefore, one URRT that includes all health insurance plans in the applicable market offered inside and outside the Exchange must be attached as Supporting Documentation in each rate filing, and within each health carrier's binder for qualified health plan (QHP) applications. It does not need to be included in the binder for health insurance plans offered outside the Exchange, but it must be included in the rate filing.

As is true for health insurance plans covering members of a family group, exchange-certified SADP policies for two or more children that include an aggregate annual out-of-pocket maximum must clearly indicate that no one child will be responsible for paying more than the single child limit annually for pediatric dental EHB.

Please be mindful of the importance of consistency in plan names across all plan materials when developing the provider directory, formulary, and plan documents.

Please direct questions about this letter to: ACAFilingInfo@scc.virginia.gov.

Sincerely,

Scott A. White
Commissioner of Insurance