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July 11, 2014

VIA EMAIL (jennifer.libster@dc.gov)
Jennifer Libster
District of Columbia Health Benefit Exchange Authority
1100 15th Street, NW 8th Floor
Washington, DC 20005

Dear Ms. Libster:

I am writing on behalf of CareFirst BlueCross BlueShield to comment on the Informal Discussion Draft of the Health Carrier Assessment Administrative Appeal process. The draft proposed rule would establish a process by which an assessed entity could contest an assessment levied pursuant to the Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014. We propose several changes to the rule that are necessary in order to properly recognize the rights of carriers, as affected parties, to appeal actions by an administrative agency such as the Exchange.

As you know, CareFirst is and has been an active participant in the Exchange Work Groups and Advisory Committees, including the Financial Sustainability Workgroup. We have been consistent in asserting our belief that it is important for the Exchange to establish a transparent, fair and broad-based approach to funding the District's Exchange. Appeal rights are a fundamental and necessary part of this transparent process. We believe the proposed rights are inappropriately narrow in several respects:

1. ***The scope of appeal is inappropriately limited*** – Under Section 110.2, health carriers would be limited to filing an appeal only if the amount in dispute is equal to or greater than 1% of the applicable assessment. Health plans are entitled to appeal any error in the calculation of the assessment. One percent is very large error rate, given the dollars at issue. For example, if a health plan had an estimated $5 million assessment, the health insurer could only file an administrative appeal if the assessment was incorrectly calculated by $50,000 or more. This would leave the carrier only with the option of pursuing its rights in court, for smaller errors – a result that would be inefficient and time consuming both for carriers and for the Exchange. We request that the proposed Section 110.2 be modified to provide that health plans be given a guaranteed right to appeal all assessment calculations without reference to a minimum threshold.

2. ***The time frames are too narrow*** – The timing of the proposed appeals process is extremely abbreviated, and we believe that it will not be practically workable. The draft rule requires health plans to file a request for reconsideration of an assessment within 30 days of the date of the assessment including all supporting documentation. The entire review process, including any necessary communications between the Exchange and the health plan, must be completed

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with within the next 30 calendar days. We recommend a more realistic timeframe of 60 days each for a carriers' ability to request reconsideration of the assessment and the review process.

3. ***<u>There is no external right to appeal</u>*** –Proposed Section 110.5 provides for the Executive Director or a designee to review the request for reconsideration of the assessment and make a final and binding decision. The restriction of a carrier's right to appeal only to the Executive Director or a designee infringes on carrier's due process rights and contravenes the general right in the District to have tax or assessment decisions appealed to the Office of Administrative Hearings or the Superior Court of the District of Columbia. *See, e.g.,* DC Code § 47-4312. CareFirst requests that Section 110.5 be modified to reflect that all decisions of the Executive Director or designee are not final and binding but are appealable in accordance with DC law. CareFirst further recommends that the Section be amended to provide that any proposed assessment be stayed pending outcome of any such appeal.

Thank you for the opportunity to comment on the draft proposal. We look forward to your consideration of our suggested changes. Please feel free to call if you have any questions.

Sincerely,

Maria Harris Tildon

Comments Received on Health Carrier Assessment Administrative Appeal

From: Cohan, Colleen C colleen_cohan@uhc.com
To: Libster, Jennifer (DCHBX) jennifer.libster@dc.gov
Sent: Fri 7/11/2014 3:38 PM
Subject: UnitedHealthcare Comments on Proposed Rule on Assessment Appeals Process

Good afternoon Jennifer,

UnitedHealthcare thanks the DC HBX Authority for the opportunity to provide feedback on the attached Draft Proposed Rule on Assessment Appeals Process. Proposed section 110.1 has a typographical error in the cite *D.C. Official Code § 31-3171.03(f)*. We believe the proper citation should be D.C. Code § 31-3171.03(e).

UnitedHealthcare respectfully requests that carriers be provided the same due process protections afforded to carriers under the DC Insurance Regulatory Trust Fund administered by the Department of Insurance, Securities and Banking (DISB). DISB is authorized by law to issue an annual assessment of carriers to help fund the administrative duties of DISB. D.C. Code § 31-1203. Any insurer or HMO aggrieved by the assessment may appeal (D.C. Code § 31-1205) and the DC Administrative Procedures Act applies, including the contested case provisions (D.C. Code § 1-1501, et seq.). In addition, judicial review of the Commissioner's adverse decisions may be taken to the District of Columbia Court of Appeals. CDCR 26-A3817. The DC HBX administrative fund should provide carriers no less than the same protections afforded under DC law for DISB assessments.

Thank you again for the opportunity to provide comments. Please feel free to contact me if you have any questions.

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