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OFFICE OF
INSURANCE COMMISSIONER

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TO: All affected health carriers in Washington State

RE: Third notification regarding Change Healthcare Cybersecurity Event

The Washington State Office of the Insurance Commissioner (OIC) continues to monitor the impact of the Change Healthcare cybersecurity event that occurred on February 21, 2024, that is affecting its operational performance. Change Healthcare is a subsidiary of UnitedHealth Group that also operates as Optum Solutions and appears to be acting as a health care benefit manager [RCW 48.200.020(4)(a)(i)-(xii)] in Washington State performing claims processing, preauthorization review, eligibility verification and credentialing services.

The OIC is issuing this notification to provide guidance regarding prior authorization, timely claims and billing standards, and utilization of medical claim clearinghouse services.

Prior Authorization

OIC has been notified that the cybersecurity event is affecting health carriers and their designated contracted representatives with respect to prior authorization process and timeframe requirements. Due to these barriers, effective on and after February 21, 2024, health carriers must process any claim that is subject to prior authorization under their extenuating circumstances policy. Health carriers must follow this process until either Change Healthcare is fully operational or the health carriers establishes an alternative prior authorization process that is fully operational.

Heath carriers that offer a health plan in Washington state must maintain a documented utilization review program based on reasonable medical evidence. The clinical protocols, medical management standards, and other review criteria must be made available to participating providers. [RCW 48.43.520] A carrier is obligated to ensure compliance with prior authorization requirements even if they use a third-party contractor. The duty is nondelegable. A carrier is not exempt from these requirements because it relied upon a third-party vendor or subcontracting arrangement to operate its prior authorization program. [WAC 284-43-2050(2)]

Effective November 1, 2019, in addition to other methods to process prior authorization requests, a carrier and its designated or contracted representative that requires prior authorization for services must have a secure online process for a participating provider or facility to complete a prior authorization request and upload necessary documentation. [WAC 284-43-2050(5)]

The carrier and its designated contracted representatives also must have written policies and procedures to assure that prior authorization determinations for a participating provider or facility are made within required time frames. [WAC 284-43-2050(9)].

As part of the prior authorization process, the carrier or its designated contracted representative must have an extenuating circumstances policy that eliminates the administrative requirements for a prior authorization of services when an extenuating circumstance prevents a participating provider or facility from obtaining a required authorization before a service is delivered. An extenuating circumstance is defined as an unforeseen event or set of circumstances which adversely affects the ability of a participating provider or facility to request prior authorization prior to service delivery. [WAC 284-43-2060]

The current ongoing cybersecurity event meets this standard and must be treated as such to protect providers, facilities, and enrollees from unreasonable delays to providing or receiving covered health care services.

Timely claims and billing standards

The cybersecurity event occurred on February 21, 2024, and while some systems have come back online problems persist for health care providers, including hospitals and outpatient facilities, attempting to submit (post) claims for covered services electronically consistent with timelines set forth in the health care providers' contract. The contractual requirements vary, ranging from requiring claims submission in as few as sixty (60) days from the date of service to over twelve (12) months from the date of service. Regardless, the result of failure to submit claims within the specified time frame(s) results in the claim being disallowed for reimbursement by the carrier and the provider being restricted from billing the member. This leaves the health care provider responsible for the full cost of the service even though they have made good faith attempts to submit claims to the health carrier or its delegated entity within contractually required timelines.

OIC has learned that some health care providers, have attempted unsuccessfully to submit claims since the first date of the cyberattack. It has been fifty-four (54) days since Change Healthcare stopped accepting valid claims. Many health care providers in Washington state are unfairly being held to the terms of the contract that may result in the denial of valid claims unless health carrier's take action to waive contract provisions that present unreasonable barriers.

The OIC requests that each affected health carrier waives these contractual provisions immediately, and share this information on their websites and appropriate provider communication platforms, such as but not limited to provider bulletin boards, news briefs, etc. Providing this temporary waiver will reassure impacted health care provider partners that claims will be paid.

Medical claim clearinghouse services

Finally, OIC is aware of ongoing practices by health carriers that are either unwilling or unable to waive exclusivity requirements for health care providers to utilize Change Healthcare or its affiliates for the submission of medical claims. Health carriers rely upon medical claim clearinghouses for the electronic hub between themselves and their health care providers to confirm covered services and sending reimbursement. It is critical that all workarounds be reviewed as quickly as possible and implemented as appropriate. OIC has learned that some health carriers have identified acceptable alternatives and are utilizing them. At a minimum, it is OIC's expectation that health carriers will permit hospitals and outpatient facilities to change medical claim clearinghouses if they are prepared to make a switch and provide authorization for the switch in an expedited manner.

As we continue to navigate this situation, this office appreciates the time and effort health carriers have put into help Washington residents and its provider community navigate this situation.

Sincerely,

Mike Kreidler,
Insurance Commissioner