December 9, 2019

Christopher Gange
Acting General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield, IL 62763-0002

RE: 89 Ill. Adm. Code 140.75

Dear Mr. Gange:

On behalf of its more than 200 member hospitals and nearly 50 health systems, the Illinois Health and Hospital Association (IHA) appreciates the opportunity to comment on the Illinois Department of Healthcare and Family Services’ (Department) proposed rule (43 Ill. Reg. 12022) to implement the Medicaid managed care provider dispute resolution process, as required by Public Act 101-0209. IHA believes the proposed rule reflects statutory intent in offering providers a pathway to resolve disputed claims with a Managed Care Organization (MCO). IHA requests consideration of the following comments, which we believe would clarify the proposed submission and documentation requirements and resolution timeframes, and ensure balance between the rights of MCOs and providers.

Subsection (b)(2) defines the timeframes in which a provider may submit an unresolved dispute to the Department via the provider complaint portal. As written, this timeframe begins “no sooner than 30 days after submitting to the MCO’s internal process” and ends either “not later than 30 days after the unsatisfactory resolution of the MCO internal process or 60 days after submitting the dispute to the MCO internal process.” The rule does not specify which end date takes precedence.

We believe the purpose of this timeframe is twofold: (1) to afford MCOs their contractually-provided 30 days to attempt to resolve disputes with providers; and (2) to prevent providers from submitting those same disputes to the Department before this 30-day window expires.

Although the proposed rule achieves this purpose, it restricts the ability of a provider to file with the Department if the MCO unsatisfactorily responds to a provider any time before those 30 days have passed. IHA believes this restriction is contrary to the intent of the legislation, which is to expedite final resolution disputes between providers and MCOs. When coupled with the timeframe end date of “not later than 30 days after an MCO’s unsatisfactory resolution,” a provider’s window to file with the Department inequitably shrinks.
For example, if an MCO responded 10 days after a provider submits a dispute to the MCO, the provider seemingly only has a 10-day timeframe to subsequently submit the dispute to the Department.

<table>
<thead>
<tr>
<th>Event</th>
<th>Timeframe to Submit to the Department</th>
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<tbody>
<tr>
<td>Provider submits dispute to MCO</td>
<td>June 1</td>
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<tr>
<td>MCO provides unsatisfactory resolution</td>
<td>June 10</td>
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</tbody>
</table>

IHA recommends the rule be modified to hasten the process of resolution, afford equitable timeframes to providers and MCOs, and clarify the timeframe a provider has to submit disputes to the Department. We also suggest expressing the 30- and 60-day timeframes as calendar days to be consistent with the rest of the proposed rule. We therefore suggest the following language:

(b)(2) Disputes that are submitted to the MCO internal dispute resolution process may be submitted to the provider complaint portal no sooner than 30 calendar days after submitting to the MCO’s internal process or after the unsatisfactory resolution of the internal MCO process and not later than 30 calendar days after the unsatisfactory resolution of the internal MCO process or 60 calendar days after submitting the dispute to the MCO internal process, whichever is later.

**Subsection (d)** directs the MCO to develop a written proposal to “address” a dispute submitted to the Department. We ask that you instead consider using the stronger term “resolve” in accordance with the statutory language. IHA members are concerned that MCOs will address the dispute by providing the same (or a substantially similar) response to the provider as the response given at the close of the MCOs’ internal dispute resolution process. Use of the less ambiguous term “resolve” would encourage MCOs to offer a more substantive response, which better expresses the intent of the law.

**Subsection (d)(2)** requires providers to submit any additional information requested by an MCO within five business days. At this point in any dispute between an MCO and a provider, an MCO has had sufficient opportunities to: (1) request additional information from the provider during claim(s) processing; and (2) before and during the MCO’s internal dispute resolution process. The MCO should already have all relevant information. Based on IHA member reports of a

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1 Assumes the end date of “not later than 30 days after the unsatisfactory resolution of the MCO internal process” takes precedence over “60 days after submitting the dispute to the MCO internal process.”
pattern across MCOs of receiving repeated requests for the same claims data, often in different formats than initially requested, we feel strongly that often MCOs’ requests for additional information are simply a delay tactic. If the proposed rule must provide another opportunity for an MCO to request additional information from a provider, the provider should not be precluded from fulfilling the request by stating the MCO is already in possession of the requested documentation. Therefore, we recommend the following revisions:

(d)(2) When additional information is requested from the provider by the MCO within the timeframes described in subsection (d)(1), the provider has 5 business days to respond with the requested information, unless the provider is granted an extension pursuant to subsection (e). When a provider is granted an extension, the provider must respond with the requested information within 5 business days after receiving the extension. Failure to respond timely provide the information will result in the disputed claims being closed.

**Subsection (e)** outlines the process for either an MCO or a provider to request a single 30-day extension. We agree that both parties should be given the option of requesting an extension, and it is our understanding that such extensions will only be granted, as they should be, under extenuating circumstances. We are concerned, however, that the latest possible timeframe for requesting an extension in the proposed rule (after the timeframes provided in subsection (d)), while equally applicable to both MCOs and providers, solely benefits MCOs.

The proposed rule would allow an MCO to request an extension up to 35 days after being presented with a dispute by the Department and five days after the proposed rule requires an MCO to present a written proposal to the provider to resolve the dispute. Pursuant to Subsection (f), a provider can only seek the Department’s final determination if the MCO’s written proposal is either unsatisfactory or not presented by the MCO to the provider on the day it was supposed to be presented. As a result, allowing an MCO to request an extension five days after a written proposal is due delays the ability of a provider to request the Department make the final determination, by at least 5 days and up to 25 days, if the MCO’s extension is granted. For all intents and purposes, a provider has no conceivable incentive or reason to request an extension five days after the proposed rule requires an MCO to present it with a written proposal. Moreover, extensions requested by providers and granted by the Department—at any time during the process—only allow a provider 5 additional days to respond to an MCO’s request for additional information, not 30 days.

Finally, the proposed rule does not indicate the date by which the Department must make a decision on an extension request. (Presumably, the Department’s decision must be made before the end of the maximum 60-day period for the MCO to resolve the dispute.) While we understand the Department’s intent is to make a decision as quickly as possible, an unforeseen delay could have the effect of delaying a provider’s request for the Department to make a final determination. As previously stated, pursuant to Subsection (f), a provider can only seek the
Department’s final determination if the MCO’s written proposal is either unsatisfactory or not presented by the MCO to the provider on the day it is due (i.e., not timely provided). The MCO’s timeliness of presenting the provider with its written proposal, under many circumstances, can hinge on whether its extension request has been granted or denied by the Department, including, its request 5 days after it was supposed to present the written proposal to the provider.

For the sake of expediency, and to balance the rights of the parties, we ask you to consider: (1) limiting the extension request period for MCOs and providers to no more than 20 calendar days of the MCO being presented with the dispute, and (2) requiring the Department to make a decision on an extension request within 10 business days. To achieve these objectives we propose the following language:

e) During the disputed claims resolution process described in subsection (d), the MCO or the provider may request, through the provider complaint portal, that the Department authorize a single 30 calendar day extension. The MCO or the provider may submit an extension request no later than 20 calendar days of the MCO being presented with the dispute. An extension request, made by either the MCO or the provider, that occurs after the timelines in subsection (d) must be made no later than 5 calendar days from the end of the initial 30 calendar day period. The Department will make a determination within 10 business days of receipt of the extension request. Approval of the extension is at the Department’s discretion. An approved extension adds 30 calendar days to the initial 30 calendar day period, for a total of 60 calendar days within which the MCO must develop a written proposal to address the disputed claims.

IHA appreciates the significant steps the Department has taken to implement the dispute resolution process in a timely and effective manner. We also appreciate the opportunity to comment on the proposed rule and would be pleased to discuss our recommendations at your convenience.

Sincerely,

A.J. Wilhelmi
President & CEO