

TRINIDAD NAVARRO  
COMMISSIONER



STATE OF DELAWARE  
DEPARTMENT OF INSURANCE

**DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 130**

**TO: INSURERS, HEALTH SERVICE CORPORATIONS, AND MANAGED CARE ORGANIZATIONS THAT DELIVER OR ISSUE FOR DELIVERY IN THIS STATE INDIVIDUAL AND GROUP INSURANCE POLICIES OR PLANS SUBJECT TO REGULATION UNDER TITLE 18 OF THE DELAWARE CODE.**

**RE: INTERPRETATION OF SECTION 8.1 OF REGULATION 1322 REQUIREMENTS FOR MANDATORY MINIMUM PAYMENT INNOVATIONS IN HEALTH INSURANCE**

**DATED: June 7, 2022**

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New Regulation 1322, Requirements for Mandatory Minimum Payment Innovations in Health Insurance (18 DE Admin. Code 1322), became effective on May 11, 2022. Background on the regulation and on the underlying statute may be found in the public notices in which the Department proposed the new regulation, which were published in the *Register of Regulations* (see 25 DE Reg. 684 (January 1, 2022) and 25 DE Reg. 828 (March 1, 2022)).

Section 8.1 of Regulation 1322 indicates that rate filings made by carriers in rate filing year 2023 for plan year 2024 should “reflect fee schedules and reimbursement structures for inpatient and outpatient hospital facility services delivered in Delaware that are based on a fixed payment, episode-based or population-based payment methodology (e.g., not a percent of charges)...” It has come to the Department’s attention that this language has been misinterpreted by some as prohibiting or banning all other types of fee schedules or reimbursement structures not referenced in Section 8.1, including fee-for-service or percent-of-charge payment methodologies.

The purpose of this Bulletin is to clarify that the Department did not intend, nor does it interpret, Section 8.1 as a prohibition on any payment methodology, and it did not receive any comments from the various stakeholders during the regulatory process that suggested that Section 8.1 was being interpreted in such a proscriptive manner. The Department recognizes that, even as carriers move towards adopting more fixed payment, episode-based or population-based payment methodologies, there are services that are not amenable to fixed payment, episode-based or population-based payment methodologies and will remain paid on a fee-for-service (or percentage of charge) basis.

Questions concerning this bulletin should be emailed to: [OVBHCD@delaware.gov](mailto:OVBHCD@delaware.gov).

This bulletin shall be effective immediately and shall remain in effect unless otherwise withdrawn or superseded by subsequent law, regulation, or bulletin.

  
Trinidad Navarro  
Delaware Insurance Commissioner